

Chapter 5

Gender-based violence against women

5.1 ISSUE ANALYSIS

5.1.1 Defining gender-based violence against women

The Maputo Protocol defines violence against women (VAW) in a comprehensive way, to include acts or threats of violence in both private and public spheres, in peacetime as well as during war and armed conflict. Provisions cover all spheres in which women experience violence—that is, in the family, in the community (i.e. at school and at work) and at the hands of the state.ⁱ

This understanding is firmly grounded in and further specifies the understanding of VAW as articulated in the United Nations Declaration on the Elimination of Violence against Women (DEVAW) (1993), which was the first international instrument to explicitly define VAW.¹ DEVAW defined VAW as ‘all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life’ (Art. 3).

The term VAW is often used interchangeably with the term **gender-based violence** (GBV). The latter underlines that violence directed at and experienced by women and girls is a manifestation of gender inequalities and power relations. GBV is hence closely linked to women’s subordinate position within families, communities and states. The term GBV emphasises that women and girls experience such violence because of their sex and in the context of these unequal gender relations. This is recognised in the understanding in CEDAW General Recommendation No. 19 (1992) of GBV as ‘violence that is directed against women because she is a woman or that affects women disproportionately’. Important to note is that GBV encapsulates forms of violence against both men and women deriving from unequal power relations and structures between men and women.ⁱⁱ The term **violence against women** underlines that women and girls are the ones that most frequently experience violence, often perpetrated by men.

Violence against women defined in the Maputo Protocol

Violence against women means ‘all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situations of armed conflicts or of war’ (Art. 1).

¹ The original CEDAW does not contain provisions regarding violence against women, which is addressed in the General Recommendations on CEDAW, in particular No. 12 (on Violence against Women, 1989) and No. 19 (on Violence against Women, 1992) and was most recently further updated in General Comment No. 35 (on Gender-based Violence against Women, 2017).

A third commonly used term, for instance by the United Nations High Commissioner for Refugees (UNHCR), is that of **sexual and gender-based violence (SGBV)**.ⁱⁱⁱ SGBV refers to 'any act that is perpetrated against a person's will and is based on gender norms and unequal power relationships', and underlines that harm can be inflicted on women, girls, men and boys.²

A fourth prominently used term is **sexual violence**, as articulated in the 2017 *Guidelines on Combating Sexual Violence and Its Consequences in Africa of the ACHPR*.³ These define sexual violence as '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', irrespective of the sex or gender of the victim or perpetrator (Section 3.1, definitions).^{iv} This definition emphasises that 'acts are considered as non-consensual when they involve violence, the threat of violence, or coercion', and that coercion can take place through '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 understanding of sexual violence encompasses a broad range of forms of violence, including but not limited to rape, sexual assault, forced marriage and pregnancy, forced sterilisation and forced abortion, human trafficking and FGM.⁴

Building on the normative strength of the definition of violence against women in the Maputo Protocol, and simultaneously making explicit how VAW is inherently linked to and a manifestation of gender unequal power relations, this report uses the term **gender-based violence against women (GVAW)**. GVAW includes but is not limited to various types of physical, sexual or psychological violence, economic abuse and exploitation, deprivation or neglect (see Box 5.1). It also includes threats of such acts, coercion, intimidation, humiliation and other deprivations of liberty.^v Apart from recognising different types of violence against women, it is critical to acknowledge the different settings in which GVAW occurs. These include the family, the community (including schools and the workplace) and state and formal institutions, as well as the context of war, armed conflict and insecurity (see Box 5.2).^{vi}

Box 5.1. Types of gender-based violence against women

Physical violence: 'intentional use of physical force with the potential for causing death, injury or harm. It includes, but is not limited to, scratching, pushing, shoving, throwing, grabbing, biting, choking, shaking, poking, hair pulling, slapping, punching, hitting, burning, the use of restraints or one's body size or strength against another person, and the use, or threat to use, weapons.'

Sexual violence: 'any non-consensual sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person's sexuality, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work.'

Psychological abuse/violence: 'any act or omission that damages the self-esteem, identity or development of the individual' or 'behaviour that is intended to intimidate and persecute, and takes the form of threats of abandonment or abuse, confinement to the home, surveillance, threats to take away custody of the children, destruction of objects, isolation, verbal aggression and constant humiliation.'

Economic abuse/violence/exploitation: 'causing or attempting to cause an individual to become financially dependent on another person, by obstructing her or his access to, or control over, resources and/or independent economic activity' or 'acts such as the denial of funds, refusal to contribute financially, denial of food and basic needs, and controlling access to health care, employment.'

Sources: Krug, E.G. et al. (2002). *World Report on Violence and Health*. Geneva: WHO.

UN Women. (2012). 'Glossary of Terms from Programming Essentials and Monitoring and Evaluation Sections'.

www.endvawnow.org/en/articles/347-glossary-of-terms-from-programming-essentials-and-monitoring-and-evaluation-sections.html

2 'Sexual and gender-based violence (SGBV) refers to any act that is perpetrated against a person's will and is based on gender norms and unequal power relationships. It includes physical, emotional or psychological and sexual violence, and denial of resources or access to services. Violence includes threats of violence and coercion. SGBV inflicts harm on women, girls, men and boys and is a severe violation of several human rights' (UNHCR Emergency Handbook: <https://emergency.unhcr.org/entry/60283/sexual-and-gender-based-violence-sgbv-prevention-and-response>).

3 The ACHPR adopted these Guidelines during its 60th Ordinary Session in Niamey, Niger on 8–22 May 2017.

4 The Guidelines specify that sexual violence is not limited to physical violence and includes but is not limited to sexual harassment, rape (which includes penetration of the vagina, anus or mouth by any object or part of the body) (includes gang rape, marital rape or 'corrective' rape), compelled rape, attempted rape, sexual assault, anal and vaginal virginity tests, violent acts to the genitals (e.g. burning, electric shocks, blows), forced marriage, forced pregnancy, forced sterilisation, forced abortion, forced prostitution, forced pornography, forced nudity, forced masturbation (or 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 FGM and threats of sexual violence used to terrorise a group or a community (Section 3.1, definitions, pp. 14–15).

Box 5.2. Settings in which gender-based violence against women occurs

In the family: violence occurring between family members and intimate partners that is taking place in the home. Such violence includes intimate partner violence (IPV)—that is, spousal beatings, sexual abuse or marital rape—but also violence between other family members—that is, child abuse, abuse of the elderly.

In the community: violence occurring between unrelated individuals, who may or may not be familiar with one another, and which is taking place in community settings outside the home such as educational institutions, streets or other open spaces (e.g. public transportation). Such violence can be, for example, verbal abuse, physical assault, sexual harassment/⁵intimidation, sexual abuse or rape.

In the workplace: a specific type of community violence occurring against and/or between workers, taking place in or outside the work place (e.g. offices, factories and farms). Such violence can include, for example, verbal abuse, physical assault, sexual harassment/intimidation, sexual abuse or rape.

In formal and state institutions: violence in which a social structure or institution may commit violence against people by preventing them from meeting basic needs. Overall, such violence occurs in two major forms: (1) violence committed by the state or subsidiary bodies (i.e. state officials, police or security forces) against its own citizens taking place within police, correctional, health and social welfare settings and (2) violence committed by the state against other states, often of political nature leading to conflict or war.

In situations of conflict and war: violence exacerbated by or evolved from different stages of conflict and war. These include during conflict, prior to flight, during flight, in country of asylum, during repatriation and during reintegration and post-conflict (see also sub-section 5.1.7 below).

Sources: Krug, E.G. et al. (2002). *World Report on Violence and Health*. Geneva: WHO.

Maina, G. (2012). 'An Overview of the Situation of Women in Conflict and Post-Conflict Africa'. ACCORD Conference Paper.

UN Women. (2013). *Violence against Women in Conflict, Post-Conflict and Emergency Settings*. New York: UN.

5.1.2 Reliable data and underreporting

GVAW is a widespread human rights violation transcending geography, race, class, sexuality, ethnicity and religion.^{vii} There is a strong need for reliable data on GVAW to understand the scope and nature of the problem. Yet the collection of reliable data on GVAW is difficult. Women find it hard to report GVAW and there is frequent withdrawal of reported cases. Factors that undermine reporting include risk and fear of being stigmatised, rejected, discriminated, insulted or blamed by legal, health and social service providers. Also, women are at risk of being turned away when reporting GVAW as it is perceived as a private matter, or even because of a preference to settle GVAW cases outside the court of law (e.g. by traditional authorities, within community or family), in order to preserve family privacy and respect. Limited capacity of service providers to adequately respond to cases of GBV can also lead to rights violations and in turn make it more difficult for women to report violence and seek care and support.

Lastly, the quality of the data collection tools and process is critical in producing reliable statistics on violence. Different organisations may use different ways of measuring GVAW, and this does not necessarily add to the reliability and comparability of data. Challenges regarding data reliability are further aggravated for human trafficking and violence in settings of conflict and war. Data concerning human trafficking is often incomplete and lacking sufficient detail, and not available from all countries.^{viii} Underreporting of violence can be exacerbated by situations of conflict or war because of lack of legal, health and social services and infrastructure for data collection during or followed by a crisis. All this means that data on GVAW should be interpreted with caution.

⁵ Sexual harassment is 'harassment of a person because of her or his sex, as by making unwelcome sexual advances or otherwise engaging in sexist practices that cause the victim loss of income, mental anguish and the like'. It is a form of sexual violence (see definition in Box 5.1) (UN Women. 2012. 'Glossary of Terms from Programming Essentials and Monitoring and Evaluation Sections'. www.endvawnow.org/en/articles/347-glossary-of-terms-from-programming-essentials-and-monitoring-and-evaluation-sections.html).

5.1.3 Physical and sexual violence

Worldwide, one in three women are estimated to have experienced some form of physical and/or sexual violence during their lifetime.^{ix} While GVAW includes different forms of violence, most studies and data focus on intimate partner physical and/or sexual violence and non-partner sexual violence, given their prevalence and impact on women's lives.^x Global estimates of IPV as well as non-partner sexual violence show GVAW is a pervasive problem in Africa, as it is worldwide.

In its 2013 report on VAW, the World Health Organization (WHO) estimated the lifetime prevalence of some form of physical and/or sexual violence by an intimate partner to be 36.6% among African women.⁶ Moreover, the lifetime prevalence of **non-partner sexual violence** was estimated to be 11.9% among African women.^{xi} As fewer studies include questions on non-partner sexual violence, comparative country data on this indicator is hard to obtain. However, regional data on non-partner sexual violence is available (Table 5.1), and suggest that one in ten women in Western and Eastern Africa experience non-partner sexual violence, and that these figures are even higher for Eastern and Southern Africa, at almost or more than one in five women.^{xii}

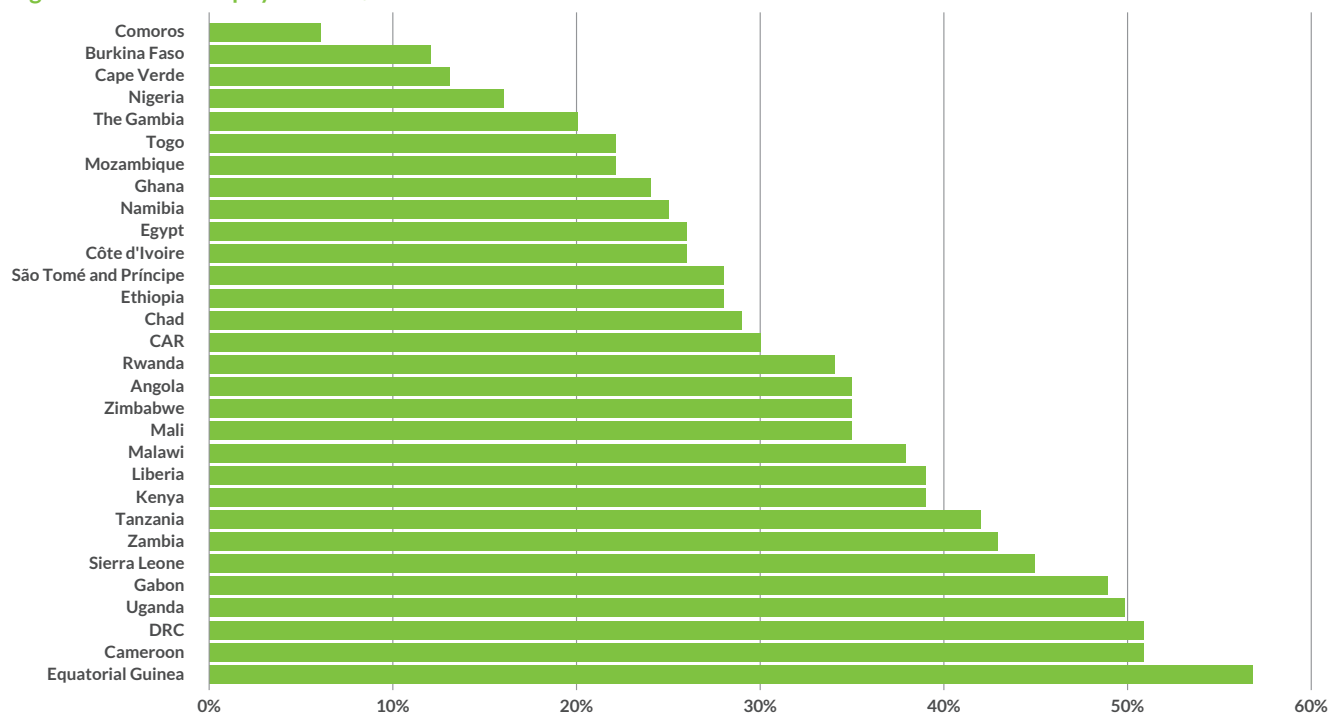
Table 5.1. Prevalence of non-partner sexual violence across African regions

African region*	Prevalence of non-partner sexual violence among women (age 15–69)**
North (including Middle East)	4.5%
Western	9.2%
Eastern	11.5%
Southern	17.4%
Central	21%

Notes: * Based on WHO Global Burden of Disease regions. ** WHO data from 2010.

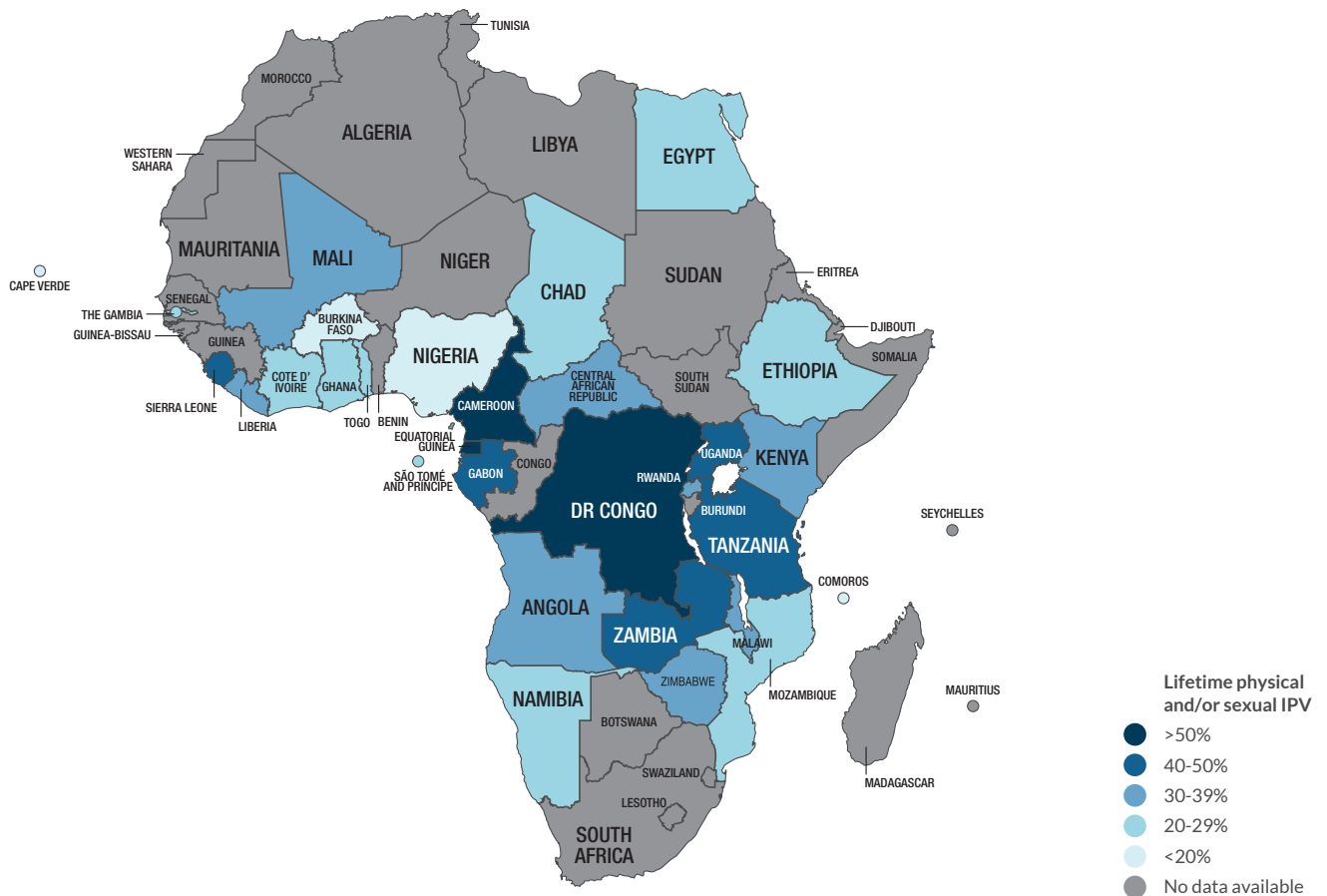
More research is done on **intimate partner violence**, and its inclusion in national Demographic Health Surveys (DHS) results in more data being available on its prevalence. As Figure 5.1 shows, prevalence of IPV varies highly between countries, with Comoros as low as 6% and Equatorial Guinea having the highest prevalence at 57%. There are no clear patterns between regions, but, overall, prevalence is high. In fact, in 19 out of the 28 countries for which data was available, between 20% and 45% of women aged 15–49 years old have experienced physical or sexual violence by their intimate partner at least once in their life.

Figure 5.1a. Lifetime physical and/or sexual IPV



⁶ IPV is also a large factor in killings of women and girls. An estimated four out of ten murders of women are committed by intimate partners, and this share is much lower for men (WHO, 2013. *Global and Regional Estimates of Violence against Women*. www.endvawnow.org/uploads/browser/files/who_prevalence_2013.pdf).

Figure 5.1b. Lifetime physical and/or sexual IPV



5.1.4 Violence experienced by marginalised groups of women and girls

Whereas GVAW is to be understood as stemming from and reinforcing unequal gendered power relations, not all women and girls experience or are exposed to violence in the same way. For example, girls and young women can be exposed to other forms of violence than those facing elderly women, and women from minority and/or disadvantaged groups, including women with disabilities, also face particular challenges (as acknowledged in the Beijing Platform for Action of 1995). Women from marginalised groups are often confronted by multiple and reinforcing layers of discrimination, leading to more disadvantage and marginalisation. Women living in poverty are more exposed to various forms of violence, given reduced opportunities for education, employment and training and poor access to health and welfare services. In addition, men living in poverty are more at risk of perpetrating violence out of anger and frustration at not having an income or finding a job.^{xiii}

Girls and young women are particularly vulnerable to certain forms of violence given their subordinate status within families and communities. These include rituals relating to their reproductive functions, such as FGM or initiation rites. Globally, violence is the second leading cause of death among adolescent girls, and this becomes more prominent when girls enter adolescence.^{xiv} One study from Zambia indicated that, among female sexual assault survivors, 49% were younger than 14 and 85% younger than 19.^{xv} Violence makes an early appearance in women's intimate and sexual relationships. A report by the United Nations Children's Fund (UNICEF) indicates that over 50% of ever-married girls have experienced IPV, with the highest rates in Equatorial Guinea, DRC, Gabon, Zimbabwe and Cameroon.^{xvi} Child marriage and FGM are also acts of violence and violations of girls' rights to bodily integrity, and are discussed more in detail in Chapter 6.

Women with disabilities are vulnerable as their disability increases their dependency on others and can disempower them. A 2014 study from Uganda indicated that girls with disabilities were at particular risk of experiencing violence (sexual violence in particular) that mainly occurs in school settings.^{xvii} Violence against women with disabilities can extend over larger periods, including through absence of mobility aids/assistive devices, laws enforcing deprivation of legal capacity and lack of access to information and counselling services, for example.^{xviii} Violence against women as well as men living with albinism is of particular concern here, and in certain regions in Africa they are exposed not only to stigma and discrimination but also to assault and killings.^{xix}

Elderly women face various forms of violence, including forms of abuse and neglect.^{xx} One example, common in Tanzania and South Africa, is violence committed against older women accused of witchcraft. Such accusations are often based on sudden, unexpected events happening in the community (i.e. sickness and/or disease in humans or animals, sudden death, impotence, etc.). Witchcraft accusations are a critical violation of women's human rights and are used as a basis for torture and various forms of violence without evidence. Lack of reporting means the current amount of African women persecuted over witchcraft is unknown.^{xxi}

Women's sexual identities and behaviours can also be a cause of violence. **Female sex workers** experience stigma associated with sex work, especially but not only in settings where sex work is criminalised. Violence against sex workers is related to exploitation and extortion of earnings by law enforcement officials or rape by clients. This violence also affects their sexual and reproductive health, and often goes hand-in-hand with lack of condom use, increasing the risk of an STI or HIV infection.^{xxii}

Lesbian, bisexual or transgender women can be subjected to discrimination and hate crimes including sexual assault, torture, murder and rape, as well as denial of education, employment and other basic human rights. ACHPR Resolution 275 recognises and is alarmed by the acts of violence, discrimination and other human rights violations that are committed against individuals in many parts of Africa because of their actual or imputed sexual orientation or gender identity. These acts include 'arbitrary arrests, detentions, extra-judicial killings and executions, forced disappearances, extortion and blackmail', as well as violence and human rights violations 'by State and non-State actors targeting human rights defenders and civil society organisations working on issues of sexual orientation or gender identity in Africa' (see also Section 5.2 of this chapter).^{xxiii} South Africa has seen a rise of 'corrective rape', which is when a man rapes a lesbian woman in order to punish and 'cure' her of their sexual orientation.^{xxiv}

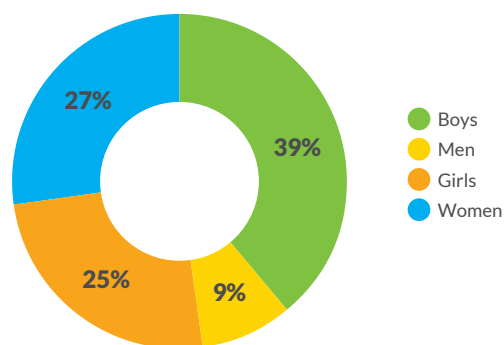
5.1.5 Trafficking of women and girls

A particular form of violence concerns **human trafficking**. Nearly two-thirds of detected victims of human trafficking in 2012–14 in Sub-Saharan Africa were children (see Figure 5.2).^{xxv} Women and girls made up more than half of all victims, mostly for sexual slavery and forced marriage. Among adult victims, trafficking among women is more prevalent. Among children, the majority are boys, and this mainly concerns trafficking for forced labour and for use as child soldiers. Trafficking is commonly defined in terms of three core elements: (1) the act, (2) the means and (3) the purpose.⁷

In Sub-Saharan Africa, the most prevalent form of trafficking is for the purpose of forced labour, including domestic servitude (53% of all detected cases; affecting both girls and boys). A total of 29% of detected cases concern sexual exploitation; these are reported throughout the region and include sexual slavery in the context of conflict and war as well as trafficking into prostitution, mainly in urban centres and tourist areas. The remaining share of trafficking cases (18%) comprises trafficking in children as armed combatants; this also includes forced marriage and is widely reported in both Western and Eastern Africa.

Most of the trafficking in human persons in Sub-Saharan Africa takes place within countries (83%), with victims for instance trafficked from rural to urban areas. Trafficking in persons occurs to a much lesser extent across borders (15%). As in many other parts of the world, about half of convicted traffickers are women, which suggests women play a prominent role in the trafficking process.^{xxvi} Trafficking is affected by push and pull factors, which respectively make people vulnerable to trafficking or contribute to 'demand' for trafficking in persons. The latter include differences in levels of economic wealth between regions or cities, as well as demand for soldiers (owing to conflict), the adoption trade and the use of body parts in rituals. Poverty, poor living conditions and lack of social and economic opportunities, as well as political instability and the lack of a legal and policy framework, are among the push factors contributing to trafficking.^{xxvii}

Figure 5.2. Victims of human trafficking in Sub-Saharan Africa (by age and sex, 2014)^{xxviii}



⁷ The 'act' refers to recruitment, transportation, transfer, harbouring and receipt in a trafficking process. The 'means' points to the threat or use of force or other forms of coercion or abuse of power, as well as abduction, fraud, deception and giving or receiving payments to gain control over another person. The 'purpose' can range from exploitation to the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or servitude or the removal of body organs. For more information: <https://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html>

5.1.6 Causes and impacts of gender-based violence against women

While there is no single factor behind GVAW, gender inequality and discrimination are root causes of GVAW. GVAW is influenced by structural and historical power imbalances between men and women. Women's lack of control and power, combined with social norms that justify or legitimise the use of force or abuse against them, contributes to prevalence of GVAW. Inequalities across social, economic, cultural and political rights increase the risk. GVAW is both a cause and a consequence of gender inequality, and it reinforces women and girls' subordinate status in society. Male dominance and control in the family and community, and lack of sanctions against perpetrators of violence, contribute to GVAW. Others factors include low socioeconomic status or educational levels and the social acceptance of attitudes condoning violence. Community values that link masculinity to dominance and honour and to male entitlement, as well as family responses to addressing violence and/or marital conflict, can also contribute to GVAW. Limited economic opportunities and high economic dependency of women on men is also an important factor. Women who are part of a marginalised or excluded group may also be more exposed to GVAW.^{xxxix}

Social norms and attitudes are key to social acceptability of violence. Many forms of GVAW continue to be accepted among both men and women in Africa owing to persisting social norms, beliefs and practices that legitimise the acceptance and tolerance of GVAW. In Malawi, for example, men can use violence as a means to 'discipline' or 'correct' their wife or children. In South Sudan, acceptance and normalisations remain drivers of GVAW.^{xxx} A 2014 report by UNICEF on violence against children and adolescents showed that, regarding attitudes towards wife-beating, over half of adolescent girls in Northern (~53%), Eastern and Southern Africa (~55%) acknowledged this to be justifiable under certain circumstances.^{xxxi} Table 5.2 shows that attitudes towards wife-beating vary across countries but demonstrate a pattern of high levels of acceptability among women and girls aged 15–49 towards wife-beating in certain circumstances.^{xxxii}

Table 5.2. Attitudes of women and girls (aged 15–49) towards wife-beating in certain circumstances

Country	Women thinking wife-beating is justified in certain circumstances
CAR	80%
DRC	76%
Niger	60%
Ghana	44%
Swaziland	28%

Besides being a human rights violation, GVAW is detrimental to women's mental, physical, sexual and reproductive health. More specifically, GVAW violates women's self-esteem, self-efficacy and inherent dignity. It can lead to depression, posttraumatic stress, anxiety disorders, sleep difficulties, eating disorders and suicide (attempts). Its impacts include long and short-term physical injuries, limited mobility, chronic pain or even fatal outcomes like homicide or suicide. It can lead to unintended/unwanted pregnancies, (forced) abortions, complications, genital lesions, vaginal and anal tears, obstetric fistula, miscarriage and increased risk of STIs such as HIV (discussed in Chapters 6 and 7). Besides all this, GVAW can also destroy community and family structures.^{xxxiii} Lastly, GVAW has great social and economic costs for countries as it can lead to women being isolated, unable to work and lacking in participation in society.^{xxxiv}

5.1.7 GVAW in situations of conflict and war

GVAW merits specific consideration in settings of conflict, war, insecurity and disaster. Women continue to be disproportionately affected by conflict and war as refugees or internally displaced persons or through the experience of devastating forms of physical and sexual violence. More specifically, physical and sexual violence is being used as a weapon of war, against men and boys as well as women and girls,^{xxxv} in order to destabilise and degrade populations (e.g. through mass rape).^{xxxvi} Reports show that sexual violence against women and girls is a pervasive problem linked to conflict and war:^{xxxvii}

- In Rwanda, during the 1994 genocide, it was estimated that up to 250,000 women were raped over a period of three months.
- In Sierra Leone, over 60,000 women were raped during the civil war (1991–2002).
- In Liberia, over 40,000 women were raped during the civil war (1989–2003).
- In DRC, over the past decade of conflict in the country, at least 200,000 women have been raped.^{xxxviii}

Various actors perpetrate conflict-related GVAW, including combatants, state security forces, peacekeepers and humanitarian workers.^{xxxix} A 2017 study indicates that soldiers, militia and community members in Sudan have used sexual violence as a weapon of war, specifically targeted marginalised groups of women in order to destabilise and victimise communities.^{xi}

Settings of instability, conflict and war not only increase women and girls' exposure to GVAW but also are related to other detrimental effects on their sexual and reproductive health. High maternal mortality rates have been observed in countries as Burundi, CAR, Chad, DRC, Guinea-Bissau, Liberia, Sierra Leone and Somalia, which were either facing or emerging from conflict.^{xii} Another study points to higher vulnerability of girls to child marriage in situations of conflict.^{xiii}

Even after conflict has ended, GVAW can continue to occur. Women and girls face specific threats and types of violence in different phases of conflict:^{xiiii}

- *During conflict*, women can suffer from rape as tool of war, sexual slavery, sexual mutilation, forced prostitution, trafficking and other prevalent forms of physical violence. Conflict and war can lead to displacement and women seeking refuge.
- *During the state of flight*, women can be confronted with sexual attack/exploitation by military and border security.
- *When residing in the country of asylum*, women can suffer sexual attack when collecting water and food, etc., or experience violence committed by persons in authority (camp representatives, country officials).
- *During repatriation*, women separated from family can experience sexual attack/exploitation.
- *During reintegration*, women who return to their country may be subjected to sexual attack as retribution, human trafficking and domestic violence.^{xliv}

Displaced women and refugee women are particularly vulnerable to violence as they are often separated from their community and family and traditionally protective structures. A study on Sudan indicates that refugee women in Sudan may face disproportionate targeting by the Public Order Regime, which is a set of discriminatory laws based on *sharia* that enforce certain moral standards of dress and hours of work on the streets, from which refugee women in particular may divert.^{xlv}

The political use of violence/GVAW is not restricted to settings of open conflict and war (Box 5.3).

Conditions of poverty are most extreme in settings of conflict and war, especially where state economies have collapsed, with high levels of insecurity, and large populations are displaced. The erosion of community support and protection structures and services and the breakdown of social norms and displacement can exacerbate GVAW.^{xlvi}

Human trafficking is importantly and inherently linked to situations of conflict or war. Political instability, conflict or war, oppression and the lack of a legal and policy framework are important push factors in the trafficking of persons. Internally displaced or destabilised populations are more vulnerable to becoming victims of trafficking.^{xlvii}

GVAW in situations of conflict, insecurity and war has long remained a largely hidden issue, because it has historically been widely held that women are part of 'the spoils' of war to which combatants or soldiers are entitled.^{xlviii} In this context, rape has been normalised as collateral damage of conflict and war and thereby accepted as unavoidable, and has gone recognised as a crime of war.

Box 5.3. Justice for victims of the 28 September 2009 massacre and rapes by Guinean security forces

On Monday 28 September 2009, around 50,000 protesters gathered in a stadium to protest the military regime and the presidential elections in Guinea, despite a ban on protests. In order to silence the protesters, security forces opened fire, with at least 157 people killed and over 1,000 injured. After the incident, witnesses saw security forces raping women publicly and women being subjected to other forms of sexual violence.

Since this time, Guineans have been fighting for justice for the events. While progress by Guinean judges has been made in terms of overcoming various political, logistical and financial obstacles, the investigation into the crimes is yet to be completed. Some people have now been charged, but several still hold influential positions in the country.

Source: HRW. (2017). 'Guinea: 8 Years Later, Justice for Massacre Needed'. www.hrw.org/news/2017/09/27/guinea-8-years-later-justice-massacre-needed

5.2 CONTINENTAL AND REGIONAL POLICY FRAMEWORKS

5.2.1 Prohibiting and eradication of all forms of violence against women

The Maputo Protocol provides extensive provisions on the eradication of all forms of GVAW. It articulates every woman's right to dignity, and requires states to take measures to ensure the 'protection of women from all forms of violence, particularly sexual and verbal violence' (Art. 3.4). This is strongly grounded in the elimination of discrimination against women, as articulated in Art. 2, which requires state parties to combat this based on the principle of equality between women and men. It commits states to eliminate all practices 'based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men' (Art. 2.2). Prohibition of all forms of violence against women is at the heart of Art. 4, which explicitly includes in this 'unwanted or forced sex whether the violence takes place in private or in public' (Art. 4.2.a). Art. 4.2.b is comprehensive in its call for 'measures as may be necessary to ensure the prevention, punishment and eradication of all forms of violence against women'.

Right to Dignity and Right to Life, Integrity and Security of the Person (Maputo Protocol)

Art. 3 – Right to Dignity

3.1 Every woman shall have the right to dignity inherent in a human being and to the recognition and protection of her human and legal rights.

3.4 States Parties shall adopt and implement appropriate measures to ensure the protection of every woman's right to respect for her dignity and protection of women from all forms of violence, particularly sexual and verbal violence.

Art. 4 – Right to Life, Integrity and Security of the Person

4.1 Every woman shall be entitled to respect for her life and the integrity and security of her person. All forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited.

4.2 States Parties shall take appropriate and effective measures to:

- a) enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public;
- b) adopt such other legislative, administrative, social and economic measures as may be necessary to ensure the prevention, punishment and eradication of all forms of violence against women.

The prohibition and eradication of all forms of GVAW are grounded in fundamental human rights as articulated in the Universal Declaration on Human Rights (UDHR) of 1948. In its first article, the UDHR states that 'All human beings are born free and equal in dignity and rights.' Furthermore, Art. 3 recognises that 'Everyone has the right to life, liberty and security of person.' In addition, the commitments of the Maputo Protocol are in line with key provisions in the African Charter, including Art. 4, on respect for life and integrity of person, which states that 'Human beings are inviolable.' They are also grounded in Art. 5, on respect for dignity and prohibition of exploitation, degradation, torture, cruel inhuman and degrading treatment and slavery, and Art. 6, on the right to liberty and security of the person.

Importantly, the UDHR, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and African Charter all remain gender-neutral in their formulation of rights. In 1979, CEDAW was the first human rights document to make reference to discrimination of women specifically, but it remained silent on GVAW.^{xlix} The 1993 DEVAW broke this silence, and was the first international document stating that 'States should pursue by all appropriate means and without delay a policy of eliminating violence against women' (Art. 4).⁸

The MPoA, formulated in 2014, addresses GVAW in the third of its ten key strategies, which concerns ensuring gender equality, women and girls empowerment and respect of human rights. This strategy includes a call for 'eliminating all forms of discrimination and violence against women and girls', as well as 'eradicating harmful traditional practices such as child marriage and female genital mutilation/cutting and other harmful practices'. This third strategy also underlines the need to 'promote social values of equality, non-discrimination and non-violent conflict resolution' (p.11).

⁸ GVAW also addressed in Cairo, Beijing and Vienna. The Committee on the Elimination of Discrimination against Women has adopted two general recommendations that address GVAW: General Recommendation No. 12, adopted in 1989, and the more elaborate General Recommendation No. 19, adopted in 1992. <http://www.un.org/womenwatch/daw/cedaw/recommendations/index.html>

5.2.2 Violence in schools and at work, and violence experienced by marginalised groups

The provisions in the Maputo Protocol are extensive not only in terms of their comprehensive understanding of violence against women and the responsibilities of state parties but also in pinpointing the many guises under which women and girls experience such violence. The explicit references to GVAW in many articles of the Protocol point to important settings in which GVAW needs to be addressed.¹

- Art. 5 (on the elimination of harmful practices) requires states to take all necessary measures to eliminate harmful practices, including ‘protection of women who are at risk of being subjected to **harmful practices** or all other forms of violence, abuse and intolerance’ (Art. 5d).
- Art. 12 (on the right to education and training) explicitly addresses forms of GVAW against girls in schools and educational institutions. It specifically requires states to take appropriate measures to protect women, especially the girl-child, from all forms of abuse, including sexual harassment **in schools and other educational institutions** and provide for sanctions against the perpetrators of such practices’ (Art. 12.1c). It also requires states to ‘provide access to counselling and rehabilitation services to women who suffer abuses and sexual harassment’ (Art. 12.1d).
- Art. 13 (on economic and social welfare rights) requires states to ‘combat and punish **sexual harassment in the workplace**’ (Art. 13c) and ‘prevent the exploitation and abuse of women in advertising and pornography’ (Art. 13m). It also explicitly calls on states to protect women ‘from exploitation by their employers’ (Art. 13d), and in particular ‘prohibit, combat and punish all forms of exploitation of children, especially the girl-child’ (Art. 13g).

The Maputo Protocol provisions also extend specific attention to GVAW experienced by marginalised groups of women. It highlights attention to ensuring the protection of poor women and women heads of households including women from marginalised population groups (Art. 24 on special protection of women in distress). Freedom from violence is explicitly articulated with respect to elderly women, widows and women with disabilities:

- In Art. 22 (on special protection of **elderly women**), state parties are required to ‘ensure the right of elderly women to freedom from violence, including sexual abuse, discrimination based on age and the right to be treated with dignity’ (Art. 22b).
- Art. 20 (on widow’s rights) underlines that states should ensure **widows** enjoy all human rights and ‘are not subject to inhuman, humiliating or degrading treatment’ (Art. 20a).
- Art. 23 (on special protection of women with disabilities), in a similar vein, requires state parties to ‘ensure the right of **women with disabilities** to freedom from violence, including sexual abuse, discrimination based on disability and the right to be treated with dignity’ (Art. 23b).

The Maputo Protocol also specifically addresses GVAW in armed conflict situations. Art. 11 (on protection of **women in armed conflicts**) requires state parties to ‘protect asylum seeking women, refugees, returnees and internally displaced persons, against all forms of violence, rape and other forms of sexual exploitation’ (Art. 11.3). GVAW in the context of insecurity, conflict and war is further discussed below. Finally, the Maputo Protocol addresses GVAW in ‘authorizing medical abortion in cases of sexual assault, rape, incest’, among other grounds (Art. 14c; see more detailed discussion on safe abortion in Chapter 7).

5.2.3 Obligations of states

The Maputo Protocol sets a high bar for state responsibility regarding violence against women.ⁱⁱ It calls for the enactment and enforcement of legal prohibition of all forms of violence against women (Art. 4.2a); for prevention and elimination by addressing the causes and consequences (Art. 4.2c); for the punishment of perpetrators (Art. 4.2e) and rehabilitation and reparation for victims (Art. 4.2e and 4.2f); for states to eradicate ‘elements in traditional and cultural beliefs, practices and stereotypes which legitimize and exacerbate the persistence and tolerance of violence against women’, by promoting peace education in schools and social communication (Art. 4.2d); and for adequate allocation of budgets and resources to implement and monitor progress on prevention and eradication (Art. 4.2i).

Required measures regarding violence against women (Maputo Protocol, Art. 4)

2. States Parties shall take appropriate and effective measures to:

- a) *enact and enforce laws to prohibit* all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public;
- b) adopt such *other legislative, administrative, social and economic measures* as may be necessary to ensure the prevention, punishment and eradication of all forms of violence against women;
- c) identify the causes and consequences of violence against women and take appropriate measures to *prevent and eliminate* such violence;
- d) actively *promote peace education* through curricula and social communication in order to eradicate elements in traditional and cultural beliefs, practices and stereotypes which legitimise and exacerbate the persistence and tolerance of violence against women;
- e) *punish the perpetrators* of violence against women and implement programmes for the rehabilitation of women victims;
- f) establish mechanisms and accessible services for *effective information, rehabilitation and reparation for victims of violence against women*;
- g) prevent and condemn trafficking in women, prosecute the perpetrators of such trafficking and protect those women most at risk;
- h) prohibit all medical or scientific experiments on women without their informed consent;
- i) provide adequate budgetary and other resources for the implementation and monitoring of actions aimed at preventing and eradicating violence against women;
- j) ensure that, in those countries where the death penalty still exists, not to carry out death sentences on pregnant or nursing women;
- k) ensure that women and men enjoy equal rights in terms of access to refugee status determination procedures and that women refugees are accorded the full protection and benefits guaranteed under international refugee law, including their own identity and other documents.

The principles and obligations of states are articulated in detail in the *Guidelines on Combating Sexual Violence and Its Consequences in Africa*, adopted by the ACHPR in 2017 (see also Chapter 3 on the mandate of the ACHPR). These Guidelines serve to provide guidance and support to AU member states in the effective implementation of their commitments to combat sexual violence and its consequences. They are grounded in the existing normative frameworks at continental and regional level (AU as well as RECs) and the international (UN) level. The principles for state responses are threefold (Part 1B of the Guidelines):

1. The **non-discrimination** principle: This requires that states take the necessary measures to ensure the rights of *all* victims of sexual violence are guaranteed and cannot be discriminated against ‘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’ (see also Box 5.4 on ACHPR Resolution 275).
2. The **‘do-no-harm’** principle: This requires states to take all legislative and other measures to guarantee the well-being and security of both victims and witnesses of sexual violence. This also includes minimising ‘the negative impact that actions to combat sexual violence and its consequences can have on victims and witnesses’, in particular investigative procedures on sexual violence acts, as well as the prosecution of perpetrators.
3. The **due diligence** principle: This requires that states adopt the necessary legislative and regulatory measures to act with due diligence in the prevention, investigation, prosecution, punishment and provisions of remedies in cases of sexual violence committed by state as well as non-state actors. This is important for holding states to account for violations committed by non-state actors, and in particular for violations in the private sphere.^{9 iii}

⁹ This is in line with CEDAW General Recommendation No. 19 (1992), that states ‘take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise’ (Point 9, p. 2, emphasis ours). CEDAW General Recommendation No. 35 (2017) further articulates this due diligence obligation. It states that, ‘under the obligation of due diligence, States parties have to adopt and implement diverse measures to tackle gender-based violence against women committed by non-State actors. They are required to have laws, institutions and a system in place to address such violence. Also, States parties are obliged to ensure that these function effectively in practice, and are supported and diligently enforced by all State agents and bodies. Failures or omissions to this effect constitute human rights violations (Part III.B.2, pp. 8–9).

Box 5.4. Violence and Human Rights Violation on the Basis of Sexual Orientation or Gender Identity (Resolution 275, ACHPR, 2014)

In May 2014, the ACHPR adopted 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*. This resolution recalls that the African Charter prohibits discrimination on the basis of distinctions of any kind (Art. 2) and entitles every individual to equal protection of the law (Art. 3). The resolution also recalls that the African Charter entitles every individual to respect of their life and integrity of their person, and prohibits torture or other cruel, inhuman and degrading treatment or punishment (Art. 4 and 5).

The ACHPR is deeply disturbed by 'the failure of law enforcement agencies to diligently investigate and prosecute perpetrators of violence and other human rights violations targeting persons on the basis of their imputed or real sexual orientation or gender identity'.

Resolution 275:

1. **Condemns** the increasing incidence of violence and other human rights violations, including murder, rape, assault, arbitrary imprisonment and other forms of persecution of persons on the basis of their imputed or real sexual orientation or gender identity
2. **Specifically condemns** the situation of systematic attacks by state and non-state actors against persons on the basis of their imputed or real sexual orientation or gender identity
3. **Calls on** state parties to ensure that human rights defenders work in an enabling environment that is free of stigma, reprisals or criminal prosecution as a result of their human rights protection activities, including the rights of sexual minorities and
4. **Strongly urges** states to end all acts of violence and abuse, whether committed by state or non-state actors, including by enacting and effectively applying appropriate laws prohibiting and punishing all forms of violence including those targeting persons on the basis of their imputed or real sexual orientation or gender identities, ensuring proper investigation and diligent prosecution of perpetrators and establishing judicial procedures responsive to the needs of victims.

The obligations of states in combating sexual violence and its consequences are fourfold:

1. To **prevent** sexual violence
2. To provide **protection and support** to victims of sexual violence
3. To guarantee **access to justice** and investigate and prosecute the perpetrators of sexual violence and
4. To provide effective **remedy and reparation** for victims of sexual violence

Box 5.5 summarises the key elements of these four obligations as well as the obligations regarding implementation of the guidelines.

Box 5.5. State obligations on sexual violence and its consequences

The ACHPR *Guidelines on Combating Sexual Violence and Its Consequences in Africa* (2017) provide an extensive explanation of the five sets of state obligations on sexual violence.

1. PREVENTING sexual violence and its consequences	<ul style="list-style-type: none"> A. Awareness-raising strategies B. Educational programmes and materials C. Training of professionals D. Urban and rural planning E. Cooperation with local stakeholders and civil society
2. PROTECTING and SUPPORTING the victims of sexual violence	<ul style="list-style-type: none"> A. Reporting sexual violence (including toll-free emergency numbers, counselling and support centres, social workers in police stations and posts) B. Measures to protect and support victims (including one-stop centres, shelters, and protection orders) C. Medical support and access to sexual and reproductive rights (including psychological support and care, sexual and reproductive health care, emergency contraception, medical abortion and post-abortion care and prevention and treatment of HIV)¹⁰ D. Social support E. Information (on rights, and protection and prevention measures) F. Coordination and cooperation between stakeholders (including focal points and on-line national guidebooks)
2. INVESTIGATING sexual violence and PROSECUTING those responsible	<ul style="list-style-type: none"> A. Criminalisation of sexual violence¹¹ B. Initiation and progress of public prosecution^{12,13} C. Investigation and prosecution in situations of conflict and crisis, as international crimes¹⁴
4. Right to REPARATION	<ul style="list-style-type: none"> A. General principles B. Types of reparation including restitution, compensation, rehabilitation, satisfaction and guarantee of non-repetition
5. IMPLEMENTATION of regional and international obligations	<ul style="list-style-type: none"> A. National legislation combating sexual violence¹⁵ B. Governmental measures¹⁶ C. National gender equality institutions and national institutions for the promotion and protection of human rights D. Measurements and statistical data E. Gender-responsive budgeting F. Implementation of the guidelines¹⁷

- ¹⁰ Including treatment by gynaecologists, proctologists and urologists (especially to treat infections and STIs including HIV, and traumatic and gynaecological fistula), pregnancy tests, contraception (including emergency contraception), medical abortions, post-abortion care and psychological support.
- ¹¹ The national legislative framework criminalising sexual violence must also (1) guarantee the effectiveness of any investigation and prosecution, (2) guarantee the victim's right to free legal assistance and representation, (3) guarantee coverage of legal forensic and medical costs, (4) contain clear and specific provisions regarding gathering, preserving and archiving of evidence, (5) ensure the most serious sexual offences are not subject to prescription, (6) prohibit any type of mediation between the victim and the perpetrator before or during legal proceedings and (7) provide penalties commensurate with the seriousness of the act of sexual violence (*Guidelines for Combating Sexual Violence and Its Consequences*, p. 30).
- ¹² Including (1) warning and reporting mechanism, (2) specialised investigative and prosecution units, (3) legal assistance and legal representation, at no cost to the victim, (4) integrity and confidentiality consent of the victims in evidence-gathering, (5) informed consent, and reversal of the burden of proof. Including the right of victims to be heard and duly represented during public prosecution. Including measures for protecting victims and witnesses of sexual violence against intimidation, reprisals and all kinds of victimisation or trauma through all phases of investigation and prosecution of sexual violence (special measures taken for children victims or witnesses of sexual violence).
- ¹³ Including proportional penalties to the seriousness of the act of sexual violence. Applicable penalties must take any aggravating circumstances into consideration, including but not limited to (1) vulnerability of the victim as a result of age, disability, status as displaced person or refugee or otherwise, (2) the relationship between victim and perpetrator, i.e. family relations or authority, (3) presence of a child, (4) number of attackers, (5) knowledge of the attacker that (s)he is infected with HIV, (6) repeated offences, (7) recidivism and (8) seriousness of physical and psychological damage (Guideline 43.1). They should *not* take the following into account as extenuating circumstances: sexual behaviour of the victim, the victim's status as a member of a given group or the conjugal relationship between the perpetrator and victim (Guideline 43.2) (*Guidelines for Combating Sexual Violence and Its Consequences*, p. 30–31).
- ¹⁴ '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' (Special Guidelines for Situations of Conflict and Crisis).
- ¹⁵ Harmonisation with regional and international instruments; specific legislation to combat sexual violence.
- ¹⁶ (1) Integrated public policy; national action plans; an implementing authority; ensuring monitoring and evaluation of implementation; (2) national action plans on women, peace and security.
- ¹⁷ Present national reports to the ACHPR every other year, including a description of progress made in implementing these guidelines (pursuant to Art. 62 of the African Charter and Art. 26 of the Maputo Protocol).

5.2.4 Violence against girls and youth

As mentioned above, the Maputo Protocol specifically acknowledges gender-based violence against girls, including sexual harassment, in school and education institutions. Other important normative frameworks that address violence against children and/or youth are the United Nations Convention on the Rights of the Child (UN CRC) (1989), and at a continental level, the African Charter on the Rights and Welfare of the Child (ACRWC) (1990) and later the African Youth Charter (AYC) (2006) (see overview of key provisions in Box 5.6).

The UN CRC and ACRWC have similar provisions regarding protecting the child from all forms of violence, injury or abuse, and also both explicitly refer to sexual exploitation and sexual abuse. The ACRWC also highlights the abduction, sale and trafficking of children. The provisions in the UN CRC and ACRWC do not explicitly underscore gender-based violence against girls. The Solemn Declaration on Gender Equality in Africa (2004) does explicitly draw attention to the abuse of the girl child, in particular the recruitment of girls as wives and sex slaves in conflict settings.¹⁸ The AYC in 2006 provided more of a focus on violence against girls and young women. The need to protect girls and young women from all forms of violence is articulated specifically, and placed in the context of eliminating discrimination against girls and young women.

Box 5.6. Continental and international commitment on violence against children and/or youth

CRC (1989)	ACRWC (1990)
<p>Art. 19: 'measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse'</p> <p>Art. 34: 'to protect the child from all forms of sexual exploitation and sexual abuse', and 'to prevent:</p> <ul style="list-style-type: none"> (a) The inducement or coercion of a child to engage in any unlawful sexual activity; (b) The exploitative use of children in prostitution or other unlawful sexual practices; (c) The exploitative use of children in pornographic performances and materials.' 	<p>Art. 16: 'measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse'</p> <p>Art. 27: 'to protect the child from all forms of sexual exploitation and sexual abuse and shall in particular take measures to prevent:</p> <ul style="list-style-type: none"> (a) the inducement, coercion or encouragement of a child to engage in any sexual activity; (b) the use of children in prostitution or other sexual practices; (c) the use of children in pornographic activities, performances and materials.' <p>Art. 29: 'to prevent:</p> <ul style="list-style-type: none"> (a) the abduction, sale of, or traffic in children for any purpose or in any form, by any person including parents or legal guardians of the child.'
<p>Maputo Protocol (2003)</p>	<p>Art. 12: to 'protect women, especially the girl-child from all forms of abuse, including sexual harassment in schools and other educational institutions and provide for sanctions against the perpetrators of such practices' and to 'provide access to counselling and rehabilitation services to women who suffer abuses and sexual harassment'</p>
<p>AYC (2006)</p>	<p>Art. 23: 'enact and enforce legislation that protect girls and young women from all forms of violence, genital mutilation, incest, rape, sexual abuse, sexual exploitation, trafficking, prostitution and pornography' and 'develop programmes of action that provide legal, physical and psychological support to girls and young women who have been subjected to violence and abuse such that they can fully re-integrate into social and economic life'</p>

¹⁸ Heads of State and Government of AU member states agreed to, among other things, 'launch, within the next one year, a campaign for systematic prohibition of the recruitment of child soldiers and abuse of girl children as wives and sex slaves in violation of their Rights as enshrined in the African Charter on Rights of the Child'.

¹⁹ This supplements the UN Convention against Transnational Organized Crime (also from 2000).

5.2.5 Trafficking of women and girls

Human trafficking or ‘trafficking in persons’ is a fundamental violation of women and girls’ human rights. The Maputo Protocol makes explicit reference to the requirement that states prevent and condemn the trafficking of women (Art. 4), prosecute perpetrators and protect women and girls most at risk. Prior to the adoption and entry into force of the Maputo Protocol, in 2000, the UN adopted the *Protocol to Prevent, Suppress and Punish Trafficking in persons especially Women and Children*, to combat and prevent trafficking in persons, assist victims and promote international cooperation.¹⁹ The Palermo Protocol is the first global legally binding instrument with an agreed definition on trafficking in persons (see Box 5.7).

Trafficking of women (Maputo Protocol, Article 4)

4.2 State parties shall take appropriate and effective measures to:

- g) *prevent and condemn trafficking in women, prosecute the perpetrators of such trafficking and protect those women most at risk.*

Box 5.7. Definition of trafficking in persons (Palermo Protocol, 2000)

Art. 3(a) of the Protocol to Prevent, Suppress and Punish Trafficking in persons especially Women and Children defines trafficking in persons as ‘recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.’

Several African countries are involved in a GLO.ACT, a joint initiative by the EU and the United Nations Office on Drugs and Crime (UNODC) to implement the Palermo Protocol. GLO.ACT is a four-year project, running from 2015 to 2019, that aims to address and prevent trafficking in persons and the smuggling of migrants, in, among others, Mali, Morocco, Niger and South Africa.ⁱⁱⁱ

At the African continental level, the Ministerial Conference on Migration and Development in 2006 adopted the *Ouagadougou Action Plan to combat trafficking in human beings, especially women and children*.^{iv} This is a migration policy aimed at combating and preventing trafficking in persons between the EU and the AU, and calls for prevention and awareness-raising, capacity-building for institutions, training of criminal justice officials and support to protection and rehabilitation centres for victims.^{iv} In relation to implementation of the Action Plan by RECs, the AU has launched the AU Commission Initiative against Trafficking Campaign (AU.COMMIT) (see Box 5.8).

Box 5.8. AU.COMMIT campaign

AU.COMMIT is one the flagship initiatives of the Africa–EU Migration Mobility and Employment Partnership (7th Partnership of the Africa–EU Strategy). The campaign has been launched in cooperation with ECOWAS, IGAD, SADC and EAC and reaches out to member states, RECs and CSOs to raise awareness regarding the challenge of trafficking in persons across the African continent. It also advocates for increased action within the framework of implementation of the Ouagadougou Action Plan.

The overall objective of the AU.COMMIT campaign is to set the pace for the fight trafficking in persons as a priority on the AU development agenda. The campaign focuses on prevention, prosecution of offenders and protection of victims. More specific objectives are to inform the public about AU.COMMIT and the AU’s determination to address trafficking in persons in cooperation with RECs, member states and other partners. It also calls on the media and CSOs to popularise and advocate for implementation of the Ouagadougou Action Plan.

At a regional level, SADC is the only REC that has a policy framework specifically targeted at human trafficking: the 10-year *SADC Strategic Plan of Action on Combating Trafficking in Persons, especially Women and Children (2009–19)* (see Box 5.9). ECOWAS adopted a *Declaration on the Fight against Trafficking in Persons* in 2001.

Box 5.9. The 10-year SADC Strategic Plan of Action on Combating Trafficking in Persons, especially Women and Children (2009–19)

This SADC Plan of Action on combating trafficking in persons articulates eight priority areas: (1) legislation and policy measures, (2) training for skills enhancement and capacity-building, (3) prevention and public awareness-raising, (4) victim support and witness protection, (5) coordination and regional cooperation, (6) research and information-sharing, (7) resource mobilisation and (8) monitoring and evaluation.^{lvi}

5.2.6 GVAW and peace and security agenda and commitments

The Maputo Protocol explicitly addresses GVAW in settings of insecurity, conflict and war. This includes both women's right to a peaceful existence and the right to participate programmes and decision-making structures in conflict and post-conflict resolution and management and the promotion of peace (Art. 10). It also specifically calls for the protection of women in armed conflicts, against all forms of violence, and the prosecution of perpetrators (Art. 11). Art. 4, on the right to life, integrity and security of the person, explicitly requires states to ensure equal rights to access to procedures to determine refugee status, and that women refugees be accorded full protection.

The provision in Article 11.2, that states shall act in accordance with international humanitarian law, is of particular significance, as it implies that sexual violence during armed conflict constitutes a war crime, genocide and/or crime against humanity.^{lvii} This means it constitutes 'preremptory norms' from which no state can derogate because violations under these crimes affect the whole international community. All states, also those not under a treaty prohibiting these crimes, are held by international humanitarian law and the obligations set there regarding war crimes, genocide and crimes against humanity.²⁰ The ACHPR *Guidelines on Combatting Sexual Violence and Its Consequences in Africa* (2017) also state that sexual violence can constitute an international crime, and specifically address sexual violence in situations of conflict and crisis in the obligations of states to investigate and prosecute (Part 4, Section C of the Guidelines; see also Box 5.5 above).

Provisions on GVAW and women, peace and security in the Maputo Protocol

Art. 4: Right to Life, Integrity and Security of the Person

States Parties shall take appropriate and effective measure to:

- 'ensure that women and men enjoy equal rights in terms of access to refugee status determination procedures and that women refugees are accorded the full protection and benefits guaranteed under international refugee law, including their own identity and other documents' (Art. 4.2k)

Art. 10: Right to Peace

- 'Women have the right to a peaceful existence and the right to participate in the promotion and maintenance of peace' (Art. 10.1).
- 'Ensure *increased participation* of women in peace education programmes; in conflict prevention, management and resolution; in decision-making structure on protection of asylum seekers, refugees, returnees and displaced persons; in structures for the management of camps and settlements; and in post-conflict reconstruction and rehabilitation' (Art. 10.2)

Art. 11: Protection of Women in Armed Conflicts

- 'State Parties undertake to respect and ensure respect for the rules of international humanitarian law applicable in armed conflict situations, which affect the population, particularly women' (Art. 11.1)
- 'State Parties shall, in accordance with the obligations incumbent upon them under international humanitarian law, protect civilians including women, irrespective of the population to which they belong, in the event of armed conflict' (Art. 11.2)
- 'State Parties undertake to protect asylum seeking women, refugees, returnees and internally displaced persons, against all forms of violence, rape and other forms of sexual exploitation, and to ensure that such acts are considered war crimes, genocide and/or crimes against humanity and that their perpetrators are brought to justice before a competent criminal jurisdiction' (Art. 11.3)

The Maputo Protocol provisions on GVAW in settings of conflict and insecurity endorse commitments expressed in the international Women, Peace and Security Agenda, in particular UNSCR 1325. The adoption of this landmark resolution in 2000 was stimulated by a big push from African stakeholders on issues of women in armed conflict or war, and was preceded by the 2000 *Windhoek Declaration of Namibia*.^{lviii} UNSCR 1325 and later resolutions (see Box 5.10), alongside CEDAW (1979), CEDAW General Recommendation No. 30 in particular and the Beijing Platform for Action (1995), make up the Women, Peace and Security Agenda.^{lix} This guides work to promote gender equality, to increase the participation of women in peace and security institutions and to ensure protection and rights across the conflict cycle, from prevention to reconstruction.²¹

²⁰ These obligations include universal jurisdiction, obligations to prosecute and extradite and the right to compensation (Dyani, N. 2006. 'Protocol on the Rights of Women in Africa: Protection of Women from Sexual Violence during Armed Conflict'. *African Human Rights Law Journal* 166–87, p. 83).

²¹ In 2007, the UN pulled its work on sexual violence in conflict together under 'UN Action against Sexual Violence in Conflict'. This was a concerted effort by 13 UN entities to improve coordination and accountability, amplify programming and advocacy and support national efforts to 'prevent sexual violence and respond effectively to the needs of survivors' (see www.stoprapenow.org). In 2008, the UN launched its campaign 'UNiTE to End Violence against Women' in order to prevent and eliminate violence against women and girls worldwide in both settings of peace and settings of conflict (<http://endviolence.un.org>). In addition, the Secretary-General publishes an annual report on sexual violence in conflict (see www.un.org/en/ga/search/view_doc.asp?symbol=S/2013/149).

On the African continental level, both the Maputo Protocol and the Solemn Declaration endorse UNSCR 1325 provisions. In addition, the AU Gender Policy, AWD and Agenda 2063, including its 10-year implementation framework, among others, are relevant policy frameworks for women, peace and security in the AU.^{ix} On the regional level, some of the RECs have frameworks or action plans in place to address peace and security issues in their specific region. For example, EAC has the Protocol for Peace and Security and Regional Strategy for Peace and Security and ECOWAS has a strong Conflict Prevention Framework and a Women, Peace and Security Action Plan (2008). Both ECOWAS and IGAD have a regional Plan of Action for implementation of UNSCRs 1325 and 1820. EAC has also formulated a Regional Action Plan, but this is still pending.

Box 5.10. United Nations Security Council Resolutions on Women, Peace and Security

UNSCR 1325 (adopted 2000) calls member states to increase the participation of women in the 'prevention and resolution of conflicts' and in the 'maintenance and promotion of peace and security'.

UNSCR 1820 (adopted 2008) calls for an end to the use of acts of sexual violence against women and girls as a tactic of war and an end to impunity of the perpetrators. It also calls for training troops on preventing and responding to sexual violence and for more deployment of women in peace operations.

UNSCR 1888 (adopted 2009) reiterates that sexual violence can exacerbate armed conflict and calls for leadership to address conflict-related sexual violence and for deployment of experts to areas in which sexual violence is occurring. Specifically, UNSCR 1888 asks the Secretary-General to appoint a Special Representative on Sexual Violence in Conflict to provide strategic leadership and promote coordination and cooperation through UN action.

UNSCR 1889 (adopted 2009) reaffirms UNSCR 1325 and calls for the development of indicators to measure the implementation of UNSCR 1325. It also focuses on the importance of women's participation in all stages of peace processes.

UNSCR 1960 (adopted 2010) reiterates the importance of ending conflict-related sexual violence. It also establishes a listing mechanism for those suspected of committing or of being responsible for patterns of sexual violence in situations.

UNSCR 2106 (adopted 2013) calls to strengthen monitoring and prevention of sexual violence in conflict.

UNSCR 2122 (adopted 2013) affirms an integrated approach to sustainable peace and focuses on stronger measures and monitoring mechanisms to increase women's engagement in conflict resolution and peace-building.

UNSCR 2242 (adopted 2015) calls for assessment of strategies and resources in the implementation of and integration of the agenda across all countries and highlights the importance of cooperation with CSOs.

UNSCR 2272 (adopted 2016) provides measures to address sexual exploitation and abuse in peace operations.

5.3 NATIONAL LEGAL AND POLICY FRAMEWORKS

Having pointed out how different forms of GBV affect women (in Section 4.1) and articulated the commitments agreed to by African states (in Section 4.2), this section looks at how these commitments are being implemented at the national level. To what extent are women and girls' rights enshrined in national constitutions, laws and policies? And what changes have taken place in the institutional frameworks in countries?

In order to capture both progress and gaps, we have formulated a number of key legal and policy indicators and then tracked these for all countries. We present these below, accompanied by a narrative analysis that pulls out trends as well as key gaps and challenges in national-level legal and policy change. The legal and policy indicators on GVAW that we review in this section are fivefold, and further defined and explained in Box 5.11. The final section of this chapter complements this overview by presenting a number of case studies on initiatives that have contributed to legal as well as social norms change towards the realisation of women's and girls' rights.

Table 5.3. GVAW legal and policy indicators

Name/description of indicator	Codes	Explanation of the indicator codes
Indicator 1 – Legislation on domestic violence	Yes	There is specific legislation on domestic violence (footnote added in case this is legislation on GVAW)
	PC	Legal provisions that criminalise domestic violence are in the penal/criminal code
	No	There are no legal provisions that criminalise domestic violence
	M	Missing data; legislation not found
Indicator 2 – Criminalisation of marital rape	Yes	Marital rape is criminalised in the law
	No	a. the law does not address or criminalise marital rape b. footnote added, in case the law explicitly excludes marital rape from the definition of rape
Indicator 3 – Law on sexual harassment	Yes	Either a broad law dedicated to sexual harassment, or a specific law on sexual harassment, or sexual harassment is addressed in a stand-alone law on GVAW (footnote added in case the legislation is specific to sexual harassment in schools or educational institutions)
	WP	In case the provisions on sexual harassment are specific to legislation on the workplace (i.e. in the labour code)
	No	There is no law or legal provision on sexual harassment
	M	Missing data; legislation not found
Indicator 4 – Law or legal provision on human trafficking	Yes	Law or legislation on human trafficking in place
	No	No law or legislation on human trafficking
Indicator 5 – National Action Plan (NAP) 1325	Yes	NAP 1325 adopted and in place
	No	No NAP 1325

The narrative analysis that complements the legal and policy indicators brings in additional data and observations from the countries, especially regarding policy and institutional reforms that could not be captured under the legal and policy indicators. For each region, the narrative analysis also draws from the Trafficking in Persons (TIP) reports of the US State Department, which track the extent to which countries worldwide are meeting minimum standards for the elimination of trafficking in persons.²² These minimum standards concern the prohibition and punishment of severe forms of trafficking in persons, and the seriousness of the efforts of the government to eliminate these forms of trafficking. These TIP reports distinguishes between countries that (1) meet the minimum standards for the elimination of TIP, (2) do not meet these minimum standards but are making significant progress and (3) do not meet the minimum standards and are also not making significant progress.²² In the second category, special attention is given to countries on the so-called 'watch list';²³ these are countries that make progress but also observe worrisome trends—such as in levels of trafficking or in the government's response to it. The narratives for each region discuss to what extent countries are meeting the minimum standards, and which countries are making progress or are on the watch list.

²² Definition of minimum standards for the elimination of TIP: '1) The government of the country should prohibit severe forms of trafficking in persons and punish acts of such trafficking. 2) For the knowing commission of any act of sex trafficking involving force, fraud, coercion, or in which the victim of sex trafficking is a child incapable of giving meaningful consent, or of trafficking which includes rape or kidnapping or which causes a death, the government of the country should prescribe punishment commensurate with that for grave crimes, such as forcible sexual assault. 3) For the knowing commission of any act of a severe form of trafficking in persons, the government of the country should prescribe punishment that is sufficiently stringent to deter and that adequately reflects the heinous nature of the offense. 4) The government of the country should make serious and sustained efforts to eliminate severe forms of trafficking in persons' (US Department of State. 2017. 'Trafficking in Persons Report'. www.state.gov/j/tip/rls/tiprpt/2017/index.htm, pp. 38–39).

²³ 'Countries whose governments do not fully meet the minimum standards, but are making significant efforts to bring themselves into compliance with those standards and: a) The absolute number of victims of severe forms of trafficking is very significant or is significantly increasing; b) There is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year; or c) The determination that a country is making significant efforts to bring itself into compliance with minimum standards was based on commitments by the country to take additional future steps over the next year' (US Department of State. 2017. 'Trafficking in Persons Report'. www.state.gov/j/tip/rls/tiprpt/2017/index.htm, p. 28).

Table 5.3 presents the overview of the findings on the legal and policy indicators by region (for explanation of the regional units used, see section 1.6.3 in Chapter 1). Please note that the totals for the continent do not equal the total of the columns, as some countries are included in more than one region.²⁴ The main trends that emerge from this overview are that *domestic violence* is not addressed in 3 out of 10 countries. Two thirds of the countries do have legislation on domestic violence, 27 have a specific law on this and 10 address it in only the penal or criminal code. *Lack of criminalisation of marital rape* continues to be a key gap across the continent, with almost three out of four countries not addressing rape within marriage in their legal framework. A total of 14 countries do have legal provisions that protect women in union from being raped—that is, 1 in 5 countries. Half of the Western African countries criminalise marital rape. Three quarters of the countries in the continent have legal provisions regarding *sexual harassment*. These are mostly articulated in specific legislation, and in quite a number of countries also in specific provisions regarding the workplace. The majority of countries have put in place legislation on *human trafficking*, with the exception of three countries in Eastern Africa, two in the Central region and one in Southern Africa. None of the countries in the continent is meeting the minimum standards on the elimination of trafficking in persons. Finally, 21 countries have adopted a NAP 1325. These include most of the countries in Western Africa and about half of those in the Eastern and Central regions. DRC is the only country in Southern Africa that has adopted a NAP 1325.

Subsequent sections in this chapter discuss regional and national details in terms of trends, gaps and key contestations in the national legal and policy frameworks on GVAW. Recognition of GVAW has increased greatly over the years. There have not only been legal reforms addressing domestic violence and sexual harassment but also various efforts regarding survivor support, improving access to justice and training of health, social and legal service providers, as well as education and awareness-raising. These efforts notwithstanding, GVAW remains persistent and largely hidden across society. Although advancements are being made, the lack of holistic frameworks, in terms of gaps in the legal framework, shortcomings in enforcement and implementation or under-resourced and suboptimal support services, can reinforce underreporting of violence and pose barriers to survivors, who refrain from seeking care.

Table 5.3. Continental and regional overview on legal and policy indicators, GVAW

GVAW	INDICATORS																	
	Law on domestic violence				Criminalisation of marital rape			Law on sexual harassment				Law on human trafficking			NAP 1325			
	Y	PC	N	M	Y	N	M	Y	WP	N	M	Y	N	M	Y	N	M	
Western (15)	8	3	4	0	6	7	2	10	1	4	0	15	0	0	13	2	0	
Eastern (11)	4	2	5	0	2	9	0	5	3	3	0	8	3	0	5	6	0	
Central (11)	6	2	3	0	2	9	0	7	2	2	0	9	2	0	5	6	0	
Southern (16)	11	1	4	0	5	11	0	7	7	2	0	15	1	0	1	15	0	
Northern (7)	1	2	3	1	0	6	1	5	0	1	1	6	0	1	0	6	1	
Country total (55—without duplications)	27	10	17	1	14	38	3	31	12	11	1	48	6	1	21	33	1	

²⁴ Five countries are considered in two regions. Burundi and Rwanda are included in both the Eastern and Central region; Tanzania is included in both Eastern and Southern; and Angola and DRC are included in both Southern and Central. The continental totals on the indicator scores are calculated by taking these duplications out, to come to a total of 55 countries.

5.3.1 Western region

Trends, gaps and contestations

The quality of the legal and policy framework in Western Africa looks fairly strong, with quite a number of strong performing countries and a few scoring very weakly. Burkina Faso, The Gambia, Ghana and Sierra Leone all score positively on all five indicators, and Benin, Cape Verde and Senegal have four positive scores. Guinea also does, but its provisions on domestic violence are in the Penal Code and not in a specific law. These same eight countries, except for Guinea and Senegal, also have a legal framework in place that addresses domestic violence as well as sexual harassment, and that includes the criminalisation of marital rape.

One country stands out for its weaker legal and policy frameworks. Mali has legislation on human trafficking and a NAP 1325 but no legislation on domestic violence, marital rape or sexual harassment. Six countries have three positive scores. Côte d'Ivoire, Niger and Togo lack legislation on domestic violence and do not criminalise marital rape, but do have a law on sexual harassment as well as human trafficking, and a NAP 1325. Guinea-Bissau, Liberia and Nigeria have legislation on domestic violence and human trafficking, and a NAP 1325, but do not criminalise marital rape and lack legislation on sexual harassment. The Nigerian Penal Code, however, explicitly excludes marital rape from the definition of rape. Overall, the Western region shows a strong record in laws on human trafficking, in place in all countries, and a high number of countries have adopted a NAP 1325.

Table 5.4. Key legal and policy indicators in Western Africa, GVAW

Country	INDICATORS				
	Legislation on domestic violence	Criminalisation of marital rape	Law on sexual harassment	Law on human trafficking	NAP 1325
Benin	Yes	Yes	Yes	Yes	No
Burkina Faso	Yes	Yes	Yes	Yes	Yes
Cape Verde	PC	Yes	Yes	Yes	No
Côte d'Ivoire	No	No	Yes	Yes	Yes
Gambia	Yes	Yes	Yes	Yes	Yes
Ghana	Yes	Yes	WP	Yes	Yes
Guinea	PC ²⁵	No	Yes ²⁶	Yes	Yes
Guinea-Bissau	Yes ²⁷	-	No	Yes	Yes
Liberia	Yes ²⁸	-	No	Yes	Yes
Mali	No	No ²⁹	No	Yes	Yes
Nigeria	Yes	No ³⁰	No	Yes	Yes
Niger	No ³¹	No	Yes	Yes	Yes ³²
Senegal	PC	No	Yes	Yes	Yes
Sierra Leone	Yes	Yes	Yes	Yes	Yes
Togo	No ³³	No	Yes ³⁴	Yes	Yes

²⁵ There is no specific legislation on domestic violence; however, women who are victims of domestic violence can appeal to the Penal Code and more specifically to Arts 295 and 303.

²⁶ A new Labour Code was adopted in February 2014 and prohibits all forms of workplace harassment, including sexual harassment.

²⁷ There is specific legislation on domestic violence, which was enacted in 2014.

²⁸ There is specific legislation on domestic violence, which was enacted in 2017 (the 'Domestic Violence Act').

²⁹ According to the US 2016 Human Rights Report on Mali, no law specifically prohibits spousal rape, but law enforcement officials stated that criminal laws against rape applied to spousal rape. Police and judicial authorities were willing to pursue rape cases but stopped if parties reached an agreement prior to trial. Information on convictions was not available.

³⁰ 'Under Article 282(2) of the Nigerian Penal Code, "sexual intercourse" by a man with his own wife is not rape if she has attained puberty.'

³¹ 'There is no a specific law prohibiting domestic violence, however, a woman can sue her husband for battery. The punishment can go from 2 months in prison and a fine of 10,000CFA to 30 years in prison.'

³² Niger has adopted a NAP 1325; however, the document has not been accessible to date.

³³ A preliminary draft law of the revised Criminal Code to classify sexual harassment, domestic violence and rape as separate offences and sanctions was validated in 2012 but has not yet been adopted.

³⁴ The 1984 Presidential Decree prohibits sexual harassment and specifically mentions harassment of female students.

Trends in legal, policy and institutional reform

Constitutional provisions: The constitutions of all countries in Western Africa contain the principle of equality for men and women under the law and protect the fundamental of human rights of all citizens, including their right to be free from torture, slavery, inhuman or degrading treatment and violence.

Statutory law on GVAW: Over the years, Western African countries have passed legislation that addresses at least one form of GVAW and some comprehensive legislation to protect women against GBV. Two-thirds of the countries in the region have legislation on *domestic violence*, and this is mostly laid down in specific legislation, and in a few cases in the penal or criminal code. In Guinea, for example, there is no specific legislation on domestic violence but women who are victims of domestic violence can appeal to the Penal Code.³⁵^{lxii}

Côte d'Ivoire, Guinea, Mali, Niger and Togo are the countries that yet have to enact legislation on domestic violence. These five countries also do not criminalise *marital rape*. Senegal also does not prohibit rape within marriage. Strikingly, Nigeria has specific legislation on domestic violence but the provisions in its Penal Code explicitly exclude marital rape from the definition of rape. Benin, Burkina Faso, Cape Verde, The Gambia, Ghana and Sierra Leone stand out as the five countries that do prohibit spousal rape.

Sexual harassment is prohibited in most countries (Guinea-Bissau, Mali, Liberia and Nigeria are exceptions). In Togo, a Presidential Decree was issued in 1984 prohibiting sexual harassment and specifically addressing harassment of female students. Ghana's provisions address only sexual harassment in the workplace (in the Domestic Violence Act 2007 and the Labour Act 2003).

Art. 7 of the Senegalese Constitution protects against physical mutilation. In addition, Art. 22 of Niger Constitution stipulates that 'the State shall take all the measures to fight violence against women and young people in the public and private sphere'. Art. 82 of Cape Verde Constitution, which was amended in 2010, prohibits domestic violence; Art. 74 assures the protection of children against sexual abuse and exploitation; and Art. 48³ prohibits any form of discrimination against women.

All 15 countries in Western Africa have adopted legislation prohibiting *human trafficking* and some, such as Côte d'Ivoire, The Gambia and Togo, have even gone further to criminalise child trafficking. Nigeria made considerable progress on fighting human trafficking through the 2005 amendment of the Trafficking in Persons (Prohibition) Enforcement and Administration Act of 2003, and established a multidimensional crime-fighting instrument in the form of the National Agency for Prohibition of Traffic in Persons and Other Related Matters (NAPTIP).³⁶^{lxiii} Since the passage of this Act, NAPTIP has successfully investigated cases, prosecuted criminals and rescued and rehabilitated victims.^{lxiv}

None of the countries is meeting the minimum standards on the elimination of trafficking as articulated in the US State Department TIP 2017 report. Guinea, Guinea-Bissau and Mali are not making significant efforts to comply with these standards, whereas the other countries in the Western African region are. Sierra Leone has increased its efforts to investigate and initiate prosecution of trafficking cases. Nine countries are on the watch list: Benin, Burkina Faso, Cape Verde, The Gambia, Ghana, Liberia, Niger, Nigeria and Senegal.³⁷^{lxv}

NAP 1325: Benin and Cape Verde are the only countries in Western Africa that have not yet adopted a NAP on UNSCR 1325. The high number of countries in Western Africa with NAP 1325s is credited to the commitment of ECOWAS to ensuring this, as recommended in the ECOWAS Regional Plan of Action for the Implementation of UNSCR 1325 and 1820 in West Africa, known as the Dakar Declaration (adopted in September 2010 in Dakar). In this, ECOWAS urged all member states to develop a NAP on UNSCR 1325 by December 2010.^{lxvi}

Policy frameworks and institutional mechanisms on GVAW: Almost all countries have developed national action plans and strategies to end GVAW. Some have gone further to increase access to justice for victims of violence. For example, in Burkina Faso, Art. 39 of Law N. 061-2015/CNT (2015) established an *ad hoc* police bodies for prosecuting SGBV. In Liberia, the National Police established a Women and Child Protection Unit in 2005, and in 2011 a special courtroom was created dedicated to hearing cases of sexual violence. In Sierra Leone, a Special Saturday Court was established in 2012 to try sexual violence cases.

³⁵ Arts 295 and 303 of the Penal Code.

³⁶ NAPTIP comprises four specialised units: investigation, prosecution, counselling and rehabilitation and public enlightenment.

³⁷ Issues hindering anti-trafficking efforts include, among other things, lack of or inadequate funding of key anti-trafficking (government) infrastructures (e.g. Benin, Côte d'Ivoire, The Gambia) or victim support and protection services and activities (e.g. Burkina Faso, Cape Verde, Nigeria, Senegal, Liberia).

Most countries have taken the initiative to establish support centres and/or shelters for victims of violence. The Senegalese government has put in place shelter and accommodation facilities for victims of violence, such as the National Women's Assistance and Training Centre.^{lxvii} Burkina Faso has put in place Legal and Social Counselling Centres for victims of violence and The Gambia established a 'one stop centre' for victims of violence in 2012.

In Côte d'Ivoire, GVAW has proven a defining feature of the recent crisis. Women and girls have been direct victims of the country's post-electoral violence, and displaced women and girls are at heightened risk of sexual violence, IPV, abandonment and forced marriage. The country's National Strategy to Combat Gender-based Violence, led by the Ministry of Solidarity, Family, Women and Children, with the support of many partners, over the course of 2009–14, focused on reinforcing a holistic response to GBV.^{lxviii} The strategy aimed to tackle key challenges such as community participation, access to justice and access to health services. In 2015, the Ministry of Justice and Public Liberties decreed that a medical certificate was no longer needed to open a rape investigation, thereby removing significant barriers to justice.^{lxix}

Key gaps and contestations

National legal frameworks in Western Africa countries are well developed with respect to human trafficking and having in place a NAP 1325. The picture with respect to domestic violence, marital rape and sexual harassment is more mixed. Violence against women is a serious issue across the region, and one that continues to take place as a result of considerable cultural acceptance.

A first gap concerns the five countries that lack a legal framework for **domestic violence**. A second and related gap is the **lack of criminalisation of marital rape**. Even though more countries in Western Africa than in any other region have outlawed spousal rape, still one in two countries does not prohibit rape within marriage. One country explicitly excludes marital rape from the definition of rape. This lack of criminalisation is critical, considering that spousal rape is still widely tolerated and accepted in most countries in Western Africa. Benin, Burkina Faso, Cape Verde, The Gambia, Ghana and Sierra Leone are the few countries where marital or spousal rape is outlawed.

Law enforcement is required in order to successfully implement legislation. GVAW that occurs in the private sphere is rarely considered a matter for police intervention. Rape is often not deemed a matter for the police, therefore many cases go unreported. Stigma and taboo surrounding sexual violence prevent victims from denouncing it and, often, blame is put on the victims. The law to enforce spousal rape is particularly difficult, as many do not consider this a crime. A specific concern is that the infrastructure of most police stations in most countries cannot cope with the demands of investigation, and many citizens settle out of court rather than risk their luck in a system they see as completely corrupt.

While most Western African countries have made attempts to end GVAW through legislation and policies, high numbers of reported cases, as well as high projected numbers of unreported cases, point to a need to tackle the **social and structural barriers** victims face, especially with regard to corruption and stigmatisation. With all countries in the region, except Niger, having ratified the Maputo Protocol, which explicitly prohibits violence against women, countries must take concrete measures to ensure laws are enacted and enforced to protect victims in both private and public.

5.3.2 Eastern region

Trends, gaps and key contestations

Progress in the legal and policy frameworks on GVAW in the Eastern region is uneven: some countries have multiple laws and policy frameworks regarding GVAW in place, and other countries lack such frameworks. Eritrea, Somalia, South Sudan and Sudan have weak legal and policy frameworks. South Sudan has a NAP 1325 but lacks legislation on domestic violence, marital rape, sexual harassment and human trafficking. Somalia and Sudan have legislation on sexual harassment but not for the other four indicators. Eritrea has a law on human trafficking but lacks legal provisions on domestic violence, marital rape and sexual harassment, and also does not have a NAP 1325. Tanzania's legal and policy framework also does not stand out as particularly strong, considering that it has only a law on human trafficking and a legal provision on sexual harassment. Djibouti has a law on human trafficking, and provisions on domestic in the Penal Code, but scores negatively on the other indicators.

Burundi, Kenya, Rwanda and Uganda stand out as the countries with the more comprehensive legal and policy frameworks on GVAW. Kenya and Rwanda have laws and legal provisions on all indicators. Burundi and Uganda have legislation on domestic violence, sexual harassment and human trafficking, and have adopted a NAP 1325, but have not criminalised marital rape. Ethiopia has a moderate score, with legislation on human trafficking as well as sexual harassment, and Penal Code provisions regarding domestic violence. Within this overall picture of high unevenness and variation across the region, lack of legislation on marital rape stands out as the weakest point: as many as 9 countries have not criminalised rape within marriage.

Table 5.5. Key legal and policy indicators in Eastern Africa, GVAW

Country	INDICATORS				
	Legislation on domestic violence	Criminalisation of marital rape	Law on sexual harassment	Law on human trafficking	NAP 1325
Burundi	Yes ³⁸	No	Yes	Yes ³⁹	Yes
Djibouti	PC	No	No	Yes	No
Eritrea	No	No	No	Yes	No
Ethiopia	PC	No ⁴⁰	Yes	Yes	No
Kenya	Yes	Yes ⁴¹	Yes	Yes	Yes
Rwanda	Yes ⁴²	Yes	WP	Yes	Yes
Somalia	No	No	WP	No	No
South Sudan	No	No ⁴³	No	No	Yes
Sudan	No	No	Yes	No	No
Tanzania	No ⁴⁴	No	Yes ⁴⁵	Yes	No
Uganda	Yes	No	WP	Yes	Yes

38 Law No. 1/13/2016 on Prevention, Protection of Victims and Expression of GBV.

39 Loi N1/28 du 29 Octobre 2014 portant Prévention et Répression de la Traite des Personnes et la Protection des Victims de la Traite.

40 Explicitly excludes marital rape in defining rape as sexual intercourse 'outside wedlock' (Art. 620 of the Criminal Code).

41 Kenya's Protection Against Domestic Violence Act (2015) includes marital rape in its definition of domestic violence in its provision in Section 3(a)(vi): 'In this Act, "violence" means abuse that includes sexual violence within marriage'. A contradictory provision in the Sexual Offences Act (2006) that had excluded marital rape from the definition of sexual violence (in section 43(5)) however persists. The more recent legislation overrides the application of the former one where there is a contradiction.

42 Law No. 59/2008 on Prevention and Punishment of GBV.

43 The law is explicit that marital rape is not an offence (Art. 247(3) of the 2008 Penal Code).

44 Whereas the Tanzanian Law of Marriage Act provides that corporal punishment may not be inflicted on a spouse, this provision is not backed by a penalty and therefore not criminalised. Corporal punishment, which is undefined, also fails to account for the various ways domestic violence may be inflicted including non-physical forms of violence.

45 Various laws including the Employment and Labour Relations Act, the Penal Code, the Sexual Offences Special Provisions Act and the newly amended Education Act, which includes provisions on sexual harassment in schools.

Trends in legal, policy and institutional reform

Constitutional provisions: The constitutions of all the states in the Eastern region contain broad provisions that are useful with regard to addressing GBV. These cover, among others, the principles of non-discrimination and equality before the law and the right to physical and mental integrity, to freedom from cruel, inhuman and degrading treatment, to freedom from slavery or servitude and to freedom from torture. Some countries have specific provisions on a form of GBV; Somalia's constitution addresses FGM; and the constitutions of Ethiopia and South Sudan speak to trafficking. Moreover, Ethiopia, Somalia, South Sudan and Sudan have specific provisions that allude to addressing harmful practices and traditions, and this may be inferred to have a bearing on GBV, depending on the rights violation in question.

Statutory law on GVAW: Virtually all states reviewed (except for South Sudan) have a statutory law that prohibits a form of GBV. Four countries have specific legislation on *domestic violence* (Burundi, Kenya, Rwanda and Uganda), and another two criminalise domestic violence in their Penal Code. Half of the countries in this region lack legislation on domestic violence. The picture with respect to criminalisation of *marital rape* is grim, with only Kenya and Rwanda legally providing that rape within marriage is criminalised. In Kenya, the Protection Against Domestic Violence Act (2015) includes marital rape in its definition of domestic violence where it provides in Section 3(a)(vi) that 'In this Act, "violence" means abuse that includes sexual violence within marriage'. By virtue of this provision, women in Kenya can now rely on the protective and relief provisions in the Act in instances of marital rape. This recent legislation overrides the provision in the 2006 Sexual Offences Act that had excluded marital rape from the definition of sexual violence.

With respect to *sexual harassment*, five countries have specific legislation regarding this in place (Burundi, Ethiopia, Kenya, Sudan and Tanzania). Three others have specific provisions on sexual harassment in the workplace (Rwanda, Somalia and Uganda). Tanzania has legislation specifically addressing sexual harassment in schools. In addition, all of the countries reviewed criminalise rape; the law in Sudan continues to be contested as rape is deemed *zina*, or sex outside marriage, and, while there has since been legal reform, not all of the law's shortcomings have been addressed, as articulated in the gaps below. In five of these countries, legal provisions exist regarding statutory rape⁴⁶ (defilement): Kenya, South Sudan, Sudan, Tanzania and Uganda.

Legislation on *human trafficking* is lacking in three countries, but present in Burundi, Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, Tanzania and Uganda. Ethiopia has legal provision regarding forced kidnapping for the purpose of early marriage. None of the countries in the Eastern region meets the minimum standards for the elimination of trafficking. Burundi, Eritrea, South Sudan and Sudan are also not making significant efforts in this direction. On the other hand, Djibouti, Ethiopia, Kenya, Rwanda, Tanzania and Uganda are making significant efforts to comply with these standards. For example, the Tanzanian government has been investigating, prosecuting and convicting more trafficking offenders compared with under the previous reporting period, and has conducted an anti-trafficking awareness-raising campaign. The Ethiopian government has made significant efforts to prevent and raise awareness on TIP and related crimes via media campaigns, its community conversations project and the training of government officials on TIP. Djibouti and Rwanda are on the watch list.⁴⁷ Somalia has been labelled a 'special case' for the 15th consecutive year, as the federal government continues to have limited influence outside the capital city Mogadishu.^{48 lxx}

NAP 1325: Five countries have adopted a National Action Plan 1325: Burundi, Kenya, Rwanda, South Sudan and Uganda. Among the seven countries without a NAP 1325 are some notable ones with a recent history of conflict and insecurity, including Somalia and Sudan.

Policy frameworks and institutional mechanisms on GVAW: Each state in the Eastern region has a policy and/ or institutional mechanism in place that addresses GVAW, either broadly or in specific terms. In seven countries (Burundi, Djibouti, Eritrea, Kenya, Tanzania, Rwanda and Uganda), institutional reforms have taken place in the police service or in military personnel efforts. These relate to community policing, gender desks in police stations, special prosecution units and revisions of requisite police forms outlining GBV violations and evidence thereto. Ethiopia has established a Women and Children Trafficking Directorate. Rwanda has established GBV Committees, and has also developed Clinical Guides for Rape Victims. South Sudan has developed Standard Operating Procedures for GBV Prevention and Protection.

⁴⁶ Statutory rape, or defilement, defines sexual activity between an adult and a minor as a sexual offence. It pertains to minors, and physically or mentally incapacitated individuals, who are legally incapable of giving consent to the sexual act. (This means that, in statutory rape, overt force or threat is usually not present, and that the law presumes coercion because consent cannot be legally given.)

⁴⁷ The anti-trafficking law of Djibouti does not incorporate the definition of trafficking as set in international law, identification of potential victims has remained sporadic and the government has not operationalised its NAP to combat trafficking, among other things.

⁴⁸ Areas in South-Central Somalia continue to be occupied by the al-Shabaab terrorist group and this is a main obstacle to the country in addressing human trafficking.

Key gaps and contestations

In light of these trends, we can observe a number of key gaps and contestations that relate to GBV. A first is that, although most countries have some legal framework or provision on a form of GVAW, the majority lack a comprehensive legal framework. Only one in three of the countries have specific and dedicated laws on domestic violence and/or sexual harassment. Some others have provisions in the penal or labour code but lack dedicated and comprehensive GVAW laws. In addition to that, there is no **holistic** approach to addressing GVAW. Whereas the Maputo Protocol provides for a broad set of measures to address the causes and consequences of violence against women, including not only a comprehensive legal framework that prohibits all forms of GVAW but also the provision of support services to victims and survivors, and the prosecution of perpetrators, the legal, policy and institutional reforms in most Eastern African countries do not live up to these standards.

A second and prominent gap is the failure to legally recognise marital rape. Of the 11 states in the Eastern region, 9 do not have a law that explicitly outlaws/prohibits **marital rape**. Worse still, two countries explicitly exclude marital rape from the definition of rape, and as such actively allow it. The law in South Sudan is explicit that marital rape is not an offence.⁴⁹ Ethiopia similarly excludes marital rape, in defining rape as sexual intercourse 'outside wedlock'.⁵⁰ Another worrisome example is from Tanzania, which not only does not address the criminalisation of marital rape but also expressly exempts sexual intercourse with 'married girls' above the age of 15 years from the definition of rape, whereas rape of girls is sanctioned.⁵¹ This is not only a problematic inconsistency but also contrary to Tanzania's own definition of a child as being below 18. In Kenya, the 2015 Protection Against Domestic Violence Act (2015) includes marital rape in its definition of domestic violence; the older Sexual Offences Act (2006) however contains a contradictory provision, and had excluded rape from applying to 'persons who are lawfully married to each other' (section 43(5)). The more recent legislation overrides the application of the former one where there is a contradiction. It is nonetheless desirable for the laws to be harmonised through the repeal of the offending provision in the Sexual Offences Act.

A third key gap concerns **retrogressive legal provisions** that perpetuate violations. Sudan is a case in point here, where, prior to reform in 2015, the crime of rape was linked to and conflated with that of adultery (*zina*),⁵² and coupled with an onerous burden to prove lack of consent. This often meant that a victim who failed to prove rape was tried for *zina*, whose punishment with respect to an unmarried woman is 100 lashes, while the sanction for a married woman is death. In 2015, new definitions were proposed and a legal reform took place, but this has not solved all shortcomings of the previous law. For instance, punishment for rape remains unchanged and still makes reference to rape in relation to adultery. A further contestation is that women and girls can be blamed and sanctioned for instances of rape and sexual harassment. The 2015 reforms to the criminal legislation contain a problematic definition of sexual harassment, which breeds ambiguity between the victim and the perpetrator through an undue imposition on the victim as inviting the harassment.

⁴⁹ Art. 247(3) of the 2008 Penal Code.

⁵⁰ Art. 620 of the Criminal Code.

⁵¹ Section 130(2) of the Penal Code.

⁵² Art. 149 of the Penal Code previously read (1) There shall be deemed to commit the offence of rape, whoever makes sexual intercourse, by way of adultery, or sodomy with any person without his consent. (2) Consent shall not be recognized, where the offender has custody, or authority over the victim. (3) Whoever commits the offence of rape, shall be punished, with whipping a hundred lashes, and with imprisonment, for a term, not exceeding ten years, unless rape constitutes the offence of adultery, or sodomy, punishable with death.

5.3.4 Central region

Trends, gaps and contestations

National legal and policy frameworks on GVAW in the Central region show a mixed picture, with considerable variation on the five indicators in the profiles of the eleven countries. Cameroon, Chad, DRC and Gabon score positively on three of the five indicators. Congo Republic and Equatorial Guinea have only one positive score, on sexual harassment and domestic violence, respectively. Angola, as in the Southern regional analysis, has a weak profile, with only two positive scores, and lacks legislation on marital rape and sexual harassment and a NAP 1325. As already noted in the Eastern region, Rwanda stands out with a positive score on all five indicators. About half of the countries in the region have a NAP 1325. On the other four indicators on GVAW frameworks, Chad, CAR and Gabon have legislation on domestic violence, sexual harassment and human trafficking but all fail to outlaw marital rape. São Tomé and Príncipe has a positive score on all these four indicators. The legal and policy framework of CAR also scores positively on four out of the five selected indicators.

Table 5.6. Key legal and policy indicators in Central Africa, GVAW

Country	INDICATORS				
	Legislation on domestic violence	Criminalisation of marital rape	Law on sexual harassment	Law on human trafficking	NAP 1325
Angola	Yes	No ⁵³	No ⁵⁴	Yes ⁵⁵	No ⁵⁶
Burundi	Yes ⁵⁷	No	Yes	Yes ⁵⁸	Yes
Cameroon	No	No	Yes	Yes	Yes
CAR	Yes	No	Yes	Yes	Yes
Chad	PC ⁵⁹	No ⁶⁰	Yes ⁶¹	Yes	No
Congo Republic	No	No	Yes	No	No
DRC	No	No	Yes ⁶²	Yes	Yes
Equatorial Guinea	PC ⁶³	No	No	No ⁶⁴	No
Gabon	Yes	No	WP	Yes	No
Rwanda	Yes ⁶⁵	Yes	WP	Yes	Yes
São Tomé and Príncipe	Yes	Yes	Yes	Yes	No

53 Isis-WICCE. (2014). 'Towards an Anti-Sexual and Gender-Based Violence Norm in the Great Lakes Region of Africa: A Civil Society Review of the Implementation of the 2011 ICGLR Kampala Declaration'.

54 Some offences can be prosecuted under assault.

55 Trafficking prohibited under the Prevention of Organised Crime Act 2009.

56 Drafted a NAP to increase women's participation in conflict prevention but does not have release date.

57 Law No.1/13/2016 on Prevention, Protection of Victims and Expression of GBV.

58 Loi N1/28 du 29 Octobre 2014 portant Prevention et Repression de la Traite des Personnes et la Protection des Victims de la Traite.

59 Domestic violence is criminalised in two acts. The Reproductive Health Act (2002) criminalises domestic violence in Arts 9 and 18. The Penal Code (2017) criminalises domestic violence in Art. 342.

60 Rape is criminalised in the Penal Code (2017) (Art. 349). Art. 350 defines punishments for specific situations (minors, vulnerable people, rape on the basis of sexual orientation) but spouses or partners are not mentioned.

61 Penal Code (2017) Harcèlement sexuel et traitements dégradants (Art. 341).

62 Contained in the Sexual Violence Law and Labour Code.

63 Only in the Criminal Code referring to personal injuries or abuse in general. No specific legislation found on violence against women. A law is under review since 2004.

64 This is a serious issue in Guinea but unfortunately since 2004 a law on child trafficking has been presented only as a project; but no official law has been found.

65 Law No. 59/2008 on Prevention and Punishment of GBV.

Trends in legal, policy and institutional reform

Constitutional provisions: All states have general provisions that may be utilised to address GVAW. These focus on the principles of right to life, physical integrity, humane treatment, freedom and security, personal safety, non-discrimination and equality before the law. All constitutions have provisions on the right to protection from torture, inhuman, cruel and degrading treatment, and most have included the obligation of the state to protect women, youth and families. Burundi has an explicit provision on women's right to protection of their physical and mental integrity.

The Constitution of DRC is the only one that refers explicitly to all forms of GVAW: it stipulates that the state must ensure the elimination of all forms of GVAW. Art. 15 states that the public authorities must ensure the elimination of sexual violence used as a weapon for the destabilisation or the dislocation of the family.^{bxxi} This is of particular importance in view of the endemic sexual violence in Eastern Congo. Some constitutions explicitly address specific forms of violence, albeit often in gender-neutral terms. The Constitution of CAR includes protection from rape and abuse; the Constitution of Chad prohibits slavery or servitude and Angola prohibits trafficking.

Statutory law on GVAW: Most countries have a penal code that criminalises violence in a broad sense (intentional assault, injuries) without referring to women, although some have provisions on violence in general against children. CAR (2006), Rwanda (2008), Angola (2011) and Burundi (2016) have introduced specific laws for the *prevention and punishment of different forms of GVAW*. Each law has a specific focus or leaves out particular issues, which illustrates the range of definitions used in the area of GVAW. The laws include provisions on physical violence and injuries (rape (CAR)), domestic violence (Angola), sexual abuse (Angola), marital rape (Rwanda), spousal abuse (Burundi), paedophilia and incest (CAR), sexual harassment (Burundi, CAR), and early marriage (Angola). The countries are signatories to the Kampala Declaration to prevent SBGV, punish perpetrators and support survivors (2011), which reaffirms their commitment to further implementation of policies on GVAW (see Case study 4 in this chapter). Countries that have a less comprehensive legal framework on GVAW, because of a narrow definition of GVAW or because they cover elements of GVAW only in the Penal Code, are Cameroon, Chad, Congo, DRC, Equatorial Guinea, Gabon and São Tomé and Príncipe.

Six out of eleven countries have legislation on *domestic violence* beyond the Penal Code. Angola, Rwanda and São Tomé and Príncipe have separate domestic violence laws that cover all four types of violence and set clear criminal penalties for transgressions. Chad has a reproductive health act that prohibits domestic and sexual violence, and the new Penal Code speaks of IPV. DRC has a sexual violence act and a separate law on human trafficking focusing on women and girls.

All penal codes penalise (attempted) rape, but *marital rape* is criminalised in only two states. In Equatorial Guinea, rape is not criminalised unless the woman is unconscious or under age 12, or when the perpetrator uses force. In Gabon, perpetrators who were 'driven by a force that they were not able to resist' are excused. Chad provides a range of aggravated punishments for specific cases, such as the rape of persons under age 18, for rape of pregnant women, for rape because of sexual orientation and for rape in the context of cybersex. Rape committed by persons in authority or by intimate relatives and rape of pregnant or vulnerable women are punished with forced labour in perpetuity in CAR. Cameroon's Penal Code specifies that rape followed by marriage does not affect prosecution.

Seven states have legislation regarding *sexual harassment*, mostly covered in sexual violence acts (e.g. DRC) or penal codes. The penal codes of Burundi, Cameroon, Chad, Congo and Gabon, for example, have chapters on indecent assault (*atteinte à la pudeur*), sexual offences (*attentats aux mœurs*) and offences against public morality (*outrages publics aux bonnes mœurs*). The articles related to these offences often include maximum penalties if committed against children (e.g. under 13 in Congo, under 18 in Burundi and Chad, minor in Cameroon) or vulnerable people, including pregnant women and widows in the context of widowhood rituals (e.g. CAR, Chad). Although most provisions are formulated in gender-neutral terms, they can be used to prosecute harassment of and assaults against women and girls. Whereas some legislation defines sexual harassment as something that has to occur repeatedly (e.g. CAR), some laws state explicitly that even one act is punishable (e.g. Chad).

Nine countries have a law on *human trafficking* or provisions in the Penal Code criminalising (attempted) human trafficking and abduction. Some states maximise punishments for cases of abduction of minors (CAR), and of adolescent girls in particular (Equatorial Guinea), or for trafficking for reasons of sexual exploitation of prostitution, slavery or servitude (CAR). Sexual slavery, forced prostitution, forced pregnancy and systematic acts of sexual violence are considered crimes against humanity in Burundi. Most legislation related to human trafficking focuses on child trafficking. For example, the anti-trafficking law of Gabon does not cover trafficking in persons above the age of 18.

None of the Central African region countries⁶⁶ meets the minimum standards for the elimination of trafficking. A few countries across Central Africa (e.g. Cameroon, Chad and Gabon) make significant efforts to comply, but these countries remain on the watch list. No efforts are being made to meet the minimum standards in Burundi, CAR, Congo Republic, DRC and Equatorial Guinea. Specifically, anti-trafficking efforts have been hindered as a result of harassment by public officials and corruption in CAR, Congo Republic and DRC, among other issues.^{lxxiii} States in the Central region (member states of ECCAS) are cooperating with West African states (member states of ECOWAS) through a bi-regional action plan to address trafficking flows between the two sub-regions. The joint plan of action emphasises the need for protection of women and children against trafficking in West and Central Africa, focusing on the legal framework and on policy development.

NAP 1325: Fewer than half of the states in the region have adopted **National Action Plans on UNSCR 1325**. These are, in the main, those in the Great Lakes Region and signatories of the Kampala Declaration (Burundi, CAR, DRC, Rwanda) but also Cameroon, which has been affected by the spill-over effects of the protracted crisis in CAR.

Policy frameworks and institutional reforms on GVAW: Countries have for the most part put in place **national structures for GVAW**, including national committees on women's affairs, committees specifically responsible for the integration of gender and GVAW in different ministries and gender desks in ministries. Whereas in most countries ministries of gender and family affairs are responsible for policy implementation, some countries have established special inter-ministerial implementation institutes (e.g. DRC, São Tomé and Príncipe). Most countries have instituted **national programmes** to combat GVAW. They have also established **gender policies**, although not all gender strategies address GVAW in a comprehensive manner.

Burundi, DRC, Rwanda and São Tomé and Príncipe have either **special courts or procedures to deal with domestic and sexual violence**.^{lxxiii} As a response to increasing numbers of cases of rape and sexual violence, CAR established a special rapid response intervention unit to address sexual violence in 2015, but this is not yet operational.

Most countries have launched zero tolerance for GVAW campaigns (Angola, Burundi, Congo Republic) since the launch of the International Conference of the Great Lakes Region Zero Tolerance Campaign in 2012. Some states organise other **advocacy campaigns around GVAW**, for example around the 16 Days of Activism against GBV or around International Women's Day (e.g. Equatorial Guinea), often lead by Heads of State (e.g. Cameroon) or First Ladies (e.g. Chad, DRC). In most countries, such campaigns are largely implemented and supported by CSOs. There have also been efforts to establish multi-sectoral cooperation and to sensitise and train judicial officers, police officers, health professionals, social workers, public officials, politicians and NGOs on women's rights and strategies to handle GVAW.

At the **decentralised level**, countries have established victim support centres, counselling centres and paralegal support units. Many governments rely on support from NGOs and CSOs to take the lead in organising public education campaigns, paralegal clinics, *centres d'écoute* and victim support. Cameroon, for example, has signed an agreement with a group of NGOs to address GVAW nationwide, including trafficking, training of police and reintegration of victims.

⁶⁶ São Tomé and Príncipe is not analysed by the US State Department TIP Report of 2017 and a country narrative is lacking.

Key gaps and contestations

The first main gap that can be observed regarding the legal framework on GVAW in the Central African region is the **lack of legal protection against marital rape**. Only two states criminalise marital rape, which is below the average for Sub-Saharan Africa.

A second gap is that seven out of eleven countries in the region have not yet established **special courts to deal with GVAW**; survivors of SGBV then depend on general courts of appeal and support from mediation structures to access justice. In countries such as CAR, there are few operational courts and a lack of judicial officers, leading to lengthy processes or rapid ‘corrections’ of perpetrators. Even where special courts (or victim support centres or paralegal clinics) are set up, they are often located in urban areas, with rural women having sparse access to justice.

Regarding the policy framework, a third challenge is the narrow focus of GVAW policies, which heavily emphasise redress and support for survivors of GVAW, including large-scale training programmes for judicial and police officers. There is **limited focus on prevention strategies and actions**, including the prosecution and rehabilitation of perpetrators and protection against repeat offending. In Equatorial Guinea, this bias is also reflected in the legal framework: the country has weak criminal law regarding GVAW but a strong victim protection and support law, allowing for low prosecution of GVAW.

A fourth gap concerns the **poor quality of prosecution and protection support**. Despite the implementation of large-scale training programmes on GVAW for the judiciary, police and medical officers, reports emphasise the lack of capacity, equipment and gender sensitivity of those supposed to provide services to GVAW victims.^{lxxiv}

Fifth, there is a **lack of attention to different categories of women**; few legal and policy frameworks differentiate between challenges faced by, for example, indigenous women, female sex workers and adolescent girls. When such attention exists, it is in separate policies and programmes, which could lead to coordination, efficiency and effectiveness problems.

A sixth gap concern obstacles to the reporting and protection of domestic violence. Although important steps have been made to criminalise domestic violence, **reporting of domestic violence and spousal abuse remains a challenge**. As discussed with regard to the other regions of the continent, domestic violence remains underreported as a result of gender norms and fear of social stigma. **Gender norms are often reproduced in legislation**; for example, the Penal Code of Gabon is silent on violence against women (except for the category of pregnant women) but explicit on violence against fathers. Similarly, the Family Code in DRC maintains that a man is the head of the household, with authority over all other members of the household including his wife, legitimising men’s control over women and strengthening gender norms that state that GVAW is allowed in marriage. These provisions strongly contradict DRC’s commitment expressed in the Constitution and laws to combat sexual violence and GVAW. Gender bias in legislation and social gender norms contribute to **low levels of prosecution** of domestic violence. Most cases, if reported at all, are settled within families. In order to respond to this challenge, Angola, in its specific law (2011) categorises domestic violence as a ‘public crime’ that can be reported by a third party. Gender norms are also exacerbated in **programmes and projects** such as those focusing on women’s economic empowerment and education. In Cameroon, for example, Women’s and Family Promotion Centres provide education to women to sensitise them on how to avoid exposure to GVAW and prostitution, thus attributing responsibility for GVAW to women.

A final issue is the **volatile political and social situation in some countries**, undermining efforts to implement progressive legislation and policies. In countries such as Burundi, Cameroon, CAR and DRC, conflict and instability generate heightened levels of GVAW. For example, continued postponement of elections as well as reprisals against peaceful protests, including against women human rights defenders, have provided obstacles to the protection and promotion of women’s rights and initiatives to tackle GVAW in DRC, despite the country’s commitments expressed in its NAP 1325.^{lxxv}

5.3.4 Southern region

Trends, gaps and contestations

In the regional picture, legal and policy frameworks in Southern Africa seem fairly strong, and are also quite homogenous. Seven of the sixteen countries have a similar profile, with legislation on domestic violence, sexual harassment and human trafficking in place but no criminalisation of marital rape and also no NAP 1325 (Botswana, Madagascar, Malawi, Mauritius, Mozambique, Seychelles and Zambia). Comoros has three positive scores on legislation on domestic violence, marital rape and sexual harassment. Comoran law does however not prohibit all forms of human trafficking and Comoros has no NAP 1325. DRC also has three positive scores, on legislation on sexual harassment and on human trafficking, and for a NAP 1325; DRC lacks legislation on domestic violence as well as on the outlawing of marital rape. DRC stands out as the only country in the region that has a NAP 1325. Lesotho also scores positive on three indicators, and does criminalise marital rape, but does not have legislation on domestic violence: a bill on domestic violence has been drafted but has never been passed. Namibia, South Africa and Zimbabwe have a stronger profile, scoring positively on all indicators except NAP 1325. Angola, Swaziland and Tanzania's national legal and policy frameworks are weaker than those of most other countries in the region. Angola has legislation on domestic violence and human trafficking but does not achieve the other indicators. Tanzania has legislation with respect to sexual harassment and human trafficking. Swaziland scores positively only on legislation on human trafficking, and otherwise lacks a legal and policy framework regarding domestic violence, marital rape, sexual harassment and the NAP 1325.

The **SADC Protocol on Gender and Development** contains specific provisions regarding GVAW. Arts 20–25 call on state parties to legislate against sexual violence, sexual harassment and other forms of GVAW and for support services, treatment and care of survivors of sexual violence and GVAW.⁶⁷ Art. 7 provides for equality in accessing justice. The Protocol targets focus emphatically on preventing and combating trafficking in women and girls, and this is strengthened by the **SADC Strategic Plan of Action on Combating Trafficking in Persons, especially Women and Children**, driven by the SADC Gender Unit.

The SADC Gender Secretariat and SADC Gender and Development Protocol Alliance, using the SADC GVAW frameworks, have been a strong factor in creating convergence towards gender-responsive frameworks to promote gender equality in SADC countries. The presence of critical regional civil society networks such as the SADC Gender Protocol Alliance and NGOs like Gender Links has led to heightened monitoring at national level. The Gender Links' *Violence against Women Baseline Studies* (2010–16) gather data from sources from household level to the institutional level, extending to police stations, courts, health services and shelters, and carry out media monitoring too.^{lxvii} Such studies have been undertaken in seven countries: Botswana, Lesotho, Mauritius, Seychelles, South Africa, Zambia and Zimbabwe.

⁶⁷ Part VI of the SADC Protocol on Gender and Development addresses GBV. It contains six articles with specific provisions: Art. 20 (on legal aspects), Art. 21 (on social, economic, cultural and political practices), Art. 22 (on sexual harassment), Art. 23 (on support services), Art. 24 (on training of service providers) and Art. 25 (on integrated approaches).

Table 5.7. Key legal and policy indicators in Southern Africa, GVAW

Country	INDICATORS				
	Legislation on domestic violence	Criminalisation of marital rape	Law on sexual harassment	Law on human trafficking	NAP 1325
Angola	Yes	No ⁶⁸	No ⁶⁹	Yes ⁷⁰	No ⁷¹
Botswana	Yes	No	WP	Yes	No
Comoros	Yes ⁷²	Yes ⁷³	Yes ⁷⁴	No	No
DRC	No	No	Yes ⁷⁵	Yes	No
Lesotho	No ⁷⁶	Yes	WP	Yes	No
Madagascar	PC ⁷⁷	No	WP	Yes	No
Malawi	Yes	No	Yes	Yes	No
Mauritius	Yes	No	Yes ⁷⁸	Yes	No
Mozambique	Yes	No	WP	Yes	No
Namibia	Yes	Yes	WP	Yes	No
Seychelles	Yes	No	WP	Yes	No
South Africa	Yes	Yes	Yes	Yes	No
Swaziland	No	No	No	Yes	No
Tanzania	No ⁷⁹	No	Yes ⁸⁰	Yes	No
Zambia	Yes ⁸¹	No	Yes	Yes	No
Zimbabwe	Yes	Yes	WP	Yes	No

Trends in legal, policy and institutional reform

Constitutional provisions: Constitutional reforms have been undertaken to ensure that countries align their frameworks more closely with the SADC Gender and Development Protocol. All SADC countries forbid discrimination based on sex and other factors. Thirteen countries have constitutional provisions on gender equality (Angola, Comoros, DRC, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania and Zimbabwe).^{lxvii}

Statutory law on GVAW: The majority of the countries (12 out of 16) have legislation on *domestic violence*, and Madagascar has sanctions in the Penal Code regarding violence against women and children. Only DRC, Lesotho and Tanzania lack specific legal provisions on GVAW, but even these have general criminal or penal codes that can address certain forms of domestic violence—namely, assaults and neglect of children. All countries have legislation criminalising *rape*. However, only five out of sixteen countries have passed laws on *marital rape* (Comoros, Lesotho, Namibia, South Africa and Zimbabwe). This could be a result of conservative or patriarchal societal forces that are reluctant to extend protection to women facing IPV. The Girls' and Women's Protection Act 39 of 1920 of Swaziland relating to sexual abuse of girls under 16 excludes marital rape in circumstances where a man is married to a girl.^{lxviii}

68 Isis-WICCE. (2014). 'Towards an Anti-Sexual and Gender-Based Violence Norm in the Great Lakes Region of Africa: A Civil Society Review of the Implementation of the 2011 ICGLR Kampala Declaration'.

69 Some offences can be prosecuted under assault.

70 Trafficking prohibited under the Prevention of Organised Crime Act 2009.

71 Drafted a NAP to increase women's participation in conflict prevention but does not have release date.

72 Original text could not be found, determined from secondary sources. A news article mentions the launch of a law on violence against women: <http://www.info.re/ocean-indien/les-comores/670664-comores-promulgation-de-la-loi-contre-les-violences-faites-aux-femmes>. Law on domestic violence also mentioned in the 2017 US State Department Human Rights Report of Comoros: <https://www.state.gov/documents/organization/265452.pdf>

73 The original text could not be found, determined from secondary sources. Mentioned in the 2017 US State Department Human Rights report of Comoros: <https://www.state.gov/documents/organization/265452.pdf>. Also indicated in World Bank Data: https://datacatalog.worldbank.org/search?search_api_views_fulltext_op=AND&query=marital+rape&sort_by=search_api_relevance&sort_by=search_api_relevance

74 The Penal Code criminalises sexual assault. http://www.wipo.int/wipolex/fr/text.jsp?file_id=208475#LinkTarget_7843. Law on Sexual harassment also mentioned in secondary source, the 2017 US State Department Human Rights Report of Comoros: <https://www.state.gov/documents/organization/265452.pdf>

75 Contained in the Sexual Violence Law and Labour Code.

76 A Domestic Violence Bill as drafted in 2000, but has not been passed (www.lesitimes.com/call-to-harmonise-laws/). The Sexual Offences Act of 2003 has stipulated that sexual abuse can take place within marriage (<http://genderlinks.org.za/news/lesotho-demanding-zero-tolerance-for-violence-against-women-2015-11-25/>).

77 The Malagasy Penal Code Update on Sanctions for Violence Against Women and Children 2005 includes domestic violence but there is no standalone legislation on domestic violence.

78 The Equal Opportunities Act 2008 covers sexual harassment in all respects of life.

79 Whereas the Tanzanian Law of Marriage Act provides that corporal punishment may not be inflicted on a spouse, this provision is not backed by a penalty and therefore not criminalised. Corporal punishment, which is undefined, also fails to account for the various ways domestic violence may be inflicted including non-physical forms of violence.

80 Various laws including the Employment and Labour Relations Act, the Penal Code, the Sexual Offences Special Provisions Act and the newly amended Education Act, which includes provisions on sexual harassment in schools.

81 Zambia has a comprehensive law named the Anti-SGBV Act.

Sexual violence in the public sphere is legislated against in the majority of the countries in the Southern region. Out of 16 countries in Southern Africa, 14 have passed legislation with respect to *sexual harassment* in different forms; only Angola and Swaziland lack such a law. In seven countries, such legislation is largely applicable to the public services employment sector, leaving out the private sector and educational institutions. In these cases, provisions are contained in labour or employment laws, mostly limited to the public service. Mauritius stands out in this regard, with an expansive definition that protects a wider range of women in the public and private arena. The Equal Opportunities Act 2008, in forbidding sexual harassment, refers specifically to a range of actors in employment, company and educational settings.⁸² For other situations, sexual harassment is criminalised in the Penal Code. In Zambia, sexual harassment comes under the Anti-SGBV Law.

Human trafficking is prohibited in 15 out of 16 countries in the region, and in 14 of these, this is done in specific legislation on trafficking in persons. Namibia prosecutes acts of trafficking under the Prevention of Organised Crime Act. The law of Comoros does not prohibit all forms of trafficking.^{lxxxix} Even though none of the countries in the Southern region is meeting minimum standards for the elimination of trafficking, all countries except DRC are making significant efforts to comply with these standards. The government of DRC has continued to arrest and detain trafficking victims (including some child soldiers, who have also reportedly been executed by the National Police and the National Army). The main issues hindering anti-trafficking efforts in DRC are lack of an anti-trafficking framework, capacity and funding and widespread corruption.^{lxxx}

NAP 1325: SADC is yet to adopt a Regional Action Plan on UNSCR 1325 or to incorporate the women, peace and security agenda in its protocols.^{lxxxi} DRC is the only country in the Southern region with a National Action Plan on UNSCR 1325. Namibia is due to formalise one and Angola, Madagascar, South Africa, Tanzania and Zimbabwe are undertaking processes in this regard.^{lxxxii} Art. 28 of the SADC Gender Protocol integrates peace-keeping, in accordance with UNSCR 1325. In December 2016, the SADC Secretariat and member states moved to develop a Regional Framework for the Implementation of Resolution 1325.^{lxxxiii}

Policy frameworks and institutional reforms on GVAW: Access to justice for survivors of GVAW is a critical component of women's human rights. Many countries in the region have institutional reforms to improve this and provide different types of support services. All countries offer various affordable and specialised services, including legal aid and shelters, to survivors of GVAW.^{lxxxiv} Service providers in government are increasingly working with NGOs to plug capacity and outreach gaps. Most countries by policy offer comprehensive treatment including post-exposure prophylaxis to survivors of sexual violence, although there is no specific legislation on this for the most part.

There has been a notable increase across the region of **one-stop centres** for survivors of GVAW, especially rape survivors. These centres bring together the police and legal and medical practitioners as well as social welfare services to offer comprehensive support to survivors of sexual violence. This model has been most successfully implemented in South Africa with the Thuthuzela Care Centres—a world-renowned model that was initiated by the National Prosecuting Agency to provide victim-friendly services to survivors of GVAW.

Police departments in most of the countries have created *specialised units* that aim to address domestic violence cases in sensitive ways. For example, Swaziland established the Domestic Violence, Child Protection and Sexual Offences Unit in 2002. In 2013, Malawi established Victim Support Units in police stations and support units in traditional authority institutions. In Botswana, each police station has a police officer trained on GVAW and other gender-related matters. South Africa has established Victim Empowerment Centres in the police department in which police officers are trained to handle GVAW survivors with sensitivity. There are also institutional reforms in the courts. Zambia has two user-friendly *fast track courts* to specifically expedite GVAW cases, and South Africa has sexual offences courts specifically to dispense justice for victims of GVAW. DRC initiated mobile courts or special circuits from 2009, focusing on only SGBV, to combat rape and impunity for such crimes in the Eastern region in particular.

In addition, quite a few countries have made attempts to develop **data** around gender issues and this effort often covers GVAW. Many countries conduct periodic DHS that include indicators on GVAW and provide much-needed data for planning, service delivery and advocacy purposes.

⁸² The Equal Opportunities Act 2008, in forbidding sexual harassment, refers to employers or their agents in general; job contractors; persons employing accommodation or disposing of immovable property; members of a partnership or company or persons who provide goods, services or facilities; and students or member of staff of educational institutions.

Key gaps and contestations

GVAW in Southern Africa continues to be prevalent in both the private and the public spheres, despite efforts at national and regional level to combat the diverse manifestations and impacts. GVAW is perpetuated by **patriarchal norms** that sustain unequal power relations between men and women and is entrenched as a result of cultural and societal acceptance of gender inequalities. This leads to environments in which GVAW is normalised and accepted in certain circumstances, at communal and family level, including practices such as marital rape, domestic violence and sexual harassment.

Countries have resisted making laws on **marital rape** as a result of cultural and religious norms that view women's consent at the time of marriage as unconditional and absolute. Major progress has been noted in legal reforms around sexual violence, domestic violence and trafficking in women and girls in particular, though less success has been evidenced concerning marital rape. Although none of the countries explicitly excludes marital rape from the definition of rape, more than two-thirds fall short of outlawing it in their legal frameworks.

Many countries in the region have made progress in terms of improving *access to justice* for GVAW survivors, to ensure accountability. There have also been steps forward in the provision of *support services*, especially counselling, legal aid and adoption of victim-friendly procedures to ensure more reporting by victims. Yet the resources for these support services are often limited in their scope, meaning the implementation of measures is challenged by lack of financial as well as human capacity. This also affects the expeditious handling of cases in courts. Other challenges that affect the provision of services to GVAW survivors include low legal literacy among survivors, long distances to courts and low representation of women in adjudicatory positions.^{lxvii} In addition to this, progressive initiatives for reforms in courts, in DRC, South Africa and Zambia, are constrained by lack of adequate human and financial resources, and also require more training of male and female personnel to enable them to obtain gender-friendly and responsive orientation. Lack of funding for training legal and health stakeholders on GVAW is a critical constraint.

5.3.5 Northern region

Trends, gaps and contestations

The profile on legal and policy indicators regarding GVAW for the Northern region looks fairly bleak. None of the countries scores positively on four or five indicators; none of the countries criminalises marital rape; and none of the countries has a NAP 1325. Libya has the weakest framework, with only a law on human trafficking in place. Mauritania and Morocco score positively on legislation on sexual harassment and on human trafficking but lack legislation on domestic violence and the criminalisation of marital rape. Egypt and Tunisia have three positive scores, on legislation on domestic violence, sexual harassment and human trafficking.

Table 5.8. Key legal and policy indicators in Northern Africa, GVAW

Country	INDICATORS				
	Legislation on domestic violence	Criminalisation of marital rape	Law on sexual harassment	Law on human trafficking	NAP 1325
Algeria	PC	No	Yes	Yes	No
Libya	No	No	No	Yes ⁸³	No
Egypt	PC	No	Yes	Yes	No
Tunisia	Yes ⁸⁴	No	Yes	Yes	No
Mauritania	No	No ⁸⁵	Yes ⁸⁶	Yes	No
Morocco	No ⁸⁷	No ⁸⁸	Yes ⁸⁹	Yes	No
Western Sahara	-	-	-	-	-

Trends in legal, policy and institutional reform

Constitutional provisions: All of the states reviewed have constitutional provisions, which are considered essential in relation to protection from GVAW. Most of the states expressly proscribe violence in their constitutions. For example, Algeria prohibits all forms of physical or psychological violence or indignity and Egypt guarantees the equality of women in all spheres and the protection of women from all forms of violence. Children (girls) are also protected from violence and sexual exploitation. Egypt's Constitution additionally prohibits trafficking. Morocco prohibits incitement to violence. Tunisia's Constitution also includes a commitment to eradicate violence against women. All the states reviewed also have provisions on equality and non-discrimination on the basis of sex or gender, which also provide a key foundation for women's protection from violence.

Statutory law on GVAW: Of the states reviewed, only Morocco and Tunisia have specific law on GVAW. Some of the other states reviewed have provisions within their penal codes criminalising *domestic violence* (Algeria, Egypt); others do not have clear provisions criminalising domestic violence (e.g. Mauritania). All of the Northern African states except for Libya have laws on *sexual harassment*. None of the states reviewed proscribes *marital rape*.

In Tunisia, the new law passed in 2017 reinforces the country's place as a leader in the Middle East and North Africa in setting human rights standards. This law expansively defines GVAW to include physical, moral, sexual or economic aggression, and recognises that GVAW or the threat of it can occur in private and public spaces. Most importantly, this law provides for help to victims of domestic violence and removes a controversial article that allows rapists to escape punishment if they marry their victim.

Similarly, in 2014 the Moroccan Parliament unanimously amended Section 475(2) of the Penal Code, which stated that 'when a marriageable minor thus removed or divorced has married his kidnapper, he can only be prosecuted on the complaint of the persons having the right to request the annulment of the marriage and cannot be condemned until after this marriage annulment has been pronounced'.⁸³ GVAW is widespread throughout the country and, after a decade of advocacy by women's groups, the Moroccan Parliament finally adopted a law in February 2018 to combat it, two years after the law was introduced in 2016.

⁸³ Criminalised in the Penal Code rather than in a standalone law.

⁸⁴ Within the general Law on Eliminating Violence against Women.

⁸⁵ Arts 309 and 310 of the Criminal Code prohibit rape but do not define it to include marital rape ('Quiconque aura commis le crime de viol sera puni des travaux forcés à temps sans préjudice, le cas échéant, des peines de Had et de la flagellation si le coupable est célibataire. S'il est marié, seule la peine capitale sera prononcée').

⁸⁶ The Mauritanian Labour Law (Arts 306, 309 and 310) clearly stipulates that any act of sexual harassment against women at workplace or elsewhere is a crime.

⁸⁷ A law to combat violence against women legislation was adopted in February 2018, five years after it was first drafted: Law no. 103-13 on Combating Violence against Women prohibits 'any act based on gender discrimination that entails physical, psychological, sexual, or economic harm to a woman'. However, the new law does not explicitly address or give a clear definition of domestic violence.

⁸⁸ The new law on violence against women does not criminalise marital rape.

⁸⁹ Under Art. 40 of the Labour Code, sexual harassment of an employee by his or her employer and incitement to debauchery are serious offences. The new law to combat violence against women goes even further, to criminalise sexual harassment via social media.

Algeria in 2016 passed significant amendments to the Penal Code in the area of sexual violence. Before that, the Penal Code had been amended in 2004 to Law No. 04-15 to create the offence of sexual harassment in public places, but this was viewed to have a narrow application. The 2016 amendment extends the definition of sexual harassment to any person who abuses power in order to give orders to, threaten or impose constraints/exercise pressure on another person to obtain sexual favours.^{lxxxvii}

All of the states in the Northern region have laws proscribing *trafficking in persons*. However, none of the countries⁹⁰ is meeting the minimum standards for the elimination of trafficking in persons. Egypt, Morocco and Tunisia are however making significant efforts to do so through, for example, new legislation that limits child domestic work; extending protection and services (both legal and social) to migrants (Morocco); creating specialised courts to prosecute human trafficking cases (Egypt); enacting new anti-trafficking legislation and training officials (Tunisia); and conducting awareness-raising campaigns (Egypt and Tunisia), among other things. Mauritania is the only country that has not made significant efforts to comply with minimum standards. Lastly, Libya is being considered a 'special case' for the second consecutive year, as the government's priority lies in securing its territory and counter violence by extremist groups.⁹¹

Policy frameworks and institutional mechanisms on GVAW: Each state reviewed has both policy and institutional mechanisms in place that address GVAW, either broadly or in specific terms, with the exception of Libya, which does not have policy measures on the issue. On policy, most countries have national strategies specific to GVAW (Algeria, Egypt, Mauritania, Morocco, Tunisia). In terms of institutional measures, some have specific organs or committees mandated with addressing GVAW (Algeria, Egypt, Libya). Morocco's institutional measure is in the form of a Domestic Violence Unit within the Criminal Investigation Directorate, tasked with gathering statistics on GVAW. In addition, Egypt and Tunisia have bodies dedicated to addressing trafficking in persons.

NAP 1325: None of the countries has adopted a National Action Plan 1325.

Key gaps and contestations

Non-criminalisation of forms of GVAW: Libya, Mauritania and Morocco have not criminalised domestic violence. Despite this being a serious issue in Mauritania, there is no specific law prohibiting it, and it does not appear in any other legislation. Under Art. 309 of the Criminal Code, rape is a criminal offence; however, the Code does not give an explicit definition of rape.

Pluralism of laws and the influence of religion and culture: In general, most of the countries apply old laws predating the Maputo Protocol on matters of personal status. The Libyan Penal Code frames sexual offences as attacks on honour rather than as a human rights issue (i.e. related to the right to bodily integrity); this may cast the spotlight on the woman's history rather than on the act of sexual violence and the perpetrator.^{lxxxviii} This is aggravated by the giving of sentences for criminal acts that are influenced by the preservation of honour that are lower than those for crimes committed without honour considerations. In a positive move, though, the Libyan Council of Ministers has adopted a decision recognising female victims of violence or those raped in the war of independence as war victims.^{lxxxix}

In most Middle Eastern and North African countries, women's right to divorce is restricted owing to **cultural and religious norms**, which can have the effect of keeping women in violent marriages, as has been observed in, for instance, Algeria and Egypt.⁹² With respect to Algeria, the UN Special Rapporteur has referred to contradictions between the interpretation of the Family Code of 2005 and the spirit of the law regarding marriage, polygamy and divorce. The offence of rape and sexual assault is not defined in the Penal Code and marital rape is not expressly prohibited. There are loopholes that allow for marriage of victims of sexual violence to their perpetrators.⁹³ In Mauritania, an Islamic country governed by *sharia* law mixed with a French colonial legal system, women have difficulties accessing justice in cases of sexual violence. For instance, women who are victims of rape find themselves accused of *zina*, which refers to sex outside the marriage between unmarried couple.^{94 xc}

⁹⁰ Western Sahara is not analysed by the US State Department TIP report of 2017 and a country narrative is lacking.

⁹¹ Libya is afflicted by widespread violence by militant groups, civil unrest and increased lawlessness, as a result of its dysfunctional judicial system, which has not been operational since 2014. Most diplomatic missions, NGOs and international organisations withdrew from the country in 2014.

⁹² Attempting to remedy this and failing, a law was introduced in Egypt in 2000, called the Khula Law, whereby a woman can file for divorce on no grounds, but then she has to forfeit her financial rights and reimburse her husband the dowry (and any gifts) paid when contracting the marriage. This effectively makes the right hard or expensive to implement in practice (www.juancole.com/2015/02/itself-womens-rights.html).

⁹³ Victims of rape may also face pressure to be married to the perpetrator, at his request or the request of either of the respective families. Further, Section 26 of the Algerian Penal Code provides that a person who 'abducts or corrupts' a child under 18 years without using violence, threats or deception or attempts to do so may be imprisoned for one to five years but can avoid this penalty if he marries the child.

⁹⁴ In Mauritania, both perpetrators and victims are culpable under *zina*. In 2013, a report found that around 60% of victims of rape were accused of *zina* and were thus in danger of being put in prison. This makes it harder for women who have been raped to fill a complaint, who will fear being imprisoned.

This plurality in legal systems may also explain the **failure to legally recognise marital rape**. None of the countries reviewed legally recognises marital rape, despite the reality and prevalence of the practice. In Tunisia, Art. 23 of the Personal Status Code requires spouses to ‘fulfil their conjugal duties according to practice and customs’, a provision that is, as Amnesty International points out, ‘generally understood to mean that sexual relations constitute a marital obligation.’^{xci,xcii} In Egypt, some abusers have erroneously used religion (Islam) to justify their violent behaviour, but this has been disputed among Islam clerics.^{xciii}

Retrogressive provisions and half-measures: In Morocco, women’s rights groups heralded the adoption of the new law criminalising violence against women but are also calling it a ‘bittersweet victory’. The new law has a number of key gaps. First, it lacks a clear definition of domestic violence and does not directly criminalise marital rape. Second, it is difficult for women to obtain a protection order (to do so, they need to file criminal charges). Meanwhile, the law does not address the issue of financial support and emergency and long-term facilities for survivors of violence, while access to the few available shelters run by NGOs is very limited as a result of scarce resources. The government needs to ensure it fully enforces the legislation to ensure that perpetrators of violence are brought to justice and also resources are available for survivors of violence.^{xciv}

In Libya, access to justice for victims is problematic, characterised by few incidences of reporting violence; cases that are lodged are usually withdrawn. This is mostly related to the difficulty for victims in reporting sexual violence, as a result of penalties imposed on sexual intercourse between an unmarried man and women.⁹⁵ Another challenge is that, in some circumstances, rapists can have their trial suspended if they marry their victim, as has also been noted in Algeria.

Implementation challenges: Despite the presence an enabling framework, underreporting of sexual violence cases such as sexual harassment is characteristic, caused by fear of accusations of victim-blaming for having incited the perpetrator’s advances or lack of protection for victims and witnesses of sexual harassment.^{xcv} Victims of GVAW are trivialised by law enforcement agents, who consider such matters domestic issues. In Algeria, there is also a ‘lack of specific rehabilitation measures for victims, difficulties faced in obtaining compensation and insufficient information on the investigation and prosecution of perpetrators of sexual violence.’^{xcvi}

Slavery in Mauritania: Mauritania is one of the few countries where slavery is still practised. Slavery was the last country to officially abolish slavery, in 1981. In 2007, the country adopted an anti-slavery law, which was later amended in 2015 by labelling slavery a ‘crime against humanity’ and making it a criminal act (it was considered an ‘offence’ in the previous law) with a jail sentence up to 15 years for offenders. Nevertheless, slavery is widely practised in the country, and the ‘status of slave is still passed down from mother to infant’^{xcvii} owing to a lack of law enforcement.

⁹⁵ Law No. 70 (1973) and the Libyan Penal Code establish the Hadd penalty on sexual intercourse between a non-married man and a non-married woman, which is punishable by flogging. This is problematic in that women who have had non-consensual sex but without proof may be flogged if they fail to prove their case, which thus discourages reporting.

5.4 Case studies

This section presents seven case studies on strategies to promote and realise women and girls' rights regarding GVAW. They speak to multiple forms of GVAW, ranging from sexual violence and rape to verbal abuse, physical abuse, sexual harassment and image-based sexual violence. This violence is experienced by women as well as girls at the hands of intimate partners, as well as parents, grandparents and relatives; by teachers, public transport drivers, neighbours and landlords; and by law enforcement officers who are actually supposed to protect and promote women and girls' rights. The case studies address GVAW experienced by women and girls in private as well as public settings, and also in contexts of armed conflict and crisis.

Each case study presents a strategy used by an actor or group of actors to promote and realise women and girls' rights in GVAW. These strategies are diverse and cover different levels. The ECOWAS Court case and the Kampala Declaration of the ICGLR are two examples at the regional level, and point to the importance and added value of regional coordination and monitoring of commitments on gender equality and women and girls' rights. The other cases document strategies at national or subnational level. They point to strategies pursued to promote and realise legal and/or policy reform, as with the work on image-based sexual violence in Zimbabwe by Katswe Sistahood.

Several case studies shed light on the efforts needed to actually implement existing legal and police frameworks. Both the Shukumisa campaign case study and the study on cross-sector coordination on Kenya's Sexual Offences Act illustrate the efforts required to translate legal provisions into practice on the ground to make a difference to women and girls' lived realities. The cross-sector coordination initiative has improved coordination and collaboration among the many actors and stakeholders involved in legal and medical support to survivors of sexual violence. The Shukumisa campaign points to the importance of continued monitoring of implementation, to further advance practice and tackle barriers. The 160 Girls project in Kenya points to the effect of public interest litigation to realise access to justice for survivors of sexual violence. The case study on the Safe Ride campaign highlights that realising women and girls' rights does not end in the formulation of legal, policy and institutional frameworks; also required is social norm change that transforms patriarchal mores and institutions that perpetuate GVAW.

Some insights that can be drawn from these seven case studies on strategies for women and girls' rights regarding GVAW are as follows:

- **Civil society and women and girls' rights organisations** are critical actors in promoting and monitoring legal, policy and institutional reform on GVAW at regional, national and subnational levels.
- **Collaboration and coordination** between stakeholders, and between government and CSOs, is critical at all levels, to avoid second traumatisation of GVAW survivors. Cross-sector collaboration along the long chain of legal and medical support to survivors of GVAW is key to realising women and girls' rights to protection from GVAW and their access to justice.
- Collaboration and coordination is also needed at **community level and with informal justice actors**, and in the linkages between these and formal justice and health systems.
- Strategies are needed to engage **men and boys** as change agents in ending GVAW.
- **Training** of legal and health professionals and officers on GVAW, its manifestations and women and girls' rights is key to the translation of legal and policy frameworks into women and girls' lived realities.

Case study 1. State accountability for sexual violence in Kenya: the 160 Girls project

The 160 Girls project is a legal advocacy initiative that successfully secured enforcement of the law in Kenya to protect girls from sexual violence. The initiative entailed a public interest court case, and the favourable court decision that ensured forced the police to investigate and prosecute the neglected rape cases in question. This led to a training programme for police officers, later rolled out across Kenya.

Girls are particularly vulnerable and disproportionately affected by sexual violence, owing to factors such as sex, gender, age and low socioeconomic status, among others. Meanwhile, lack of perpetrator prosecution and accountability perpetuates the occurrence and social acceptance of sexual violence. This was the case in Meru county in eastern Kenya, where 160 girls, all between the ages of 3 and 17 years old, had all been victims of rape and in other cases repeated rapes. The girls were identified through Tumaini Girls Rescue Centre/Ripples International in Meru. Most had been raped by people known to them, including parents, grandparents, relatives, teachers, neighbours, landlords and a police officer. Since the perpetrators were known, this should ideally have resulted in more effective investigations and prosecutions. However, none of the 160 girls had received justice, with the police neglecting or refusing to pursue the reports.

In response to this systemic and perverse lack of access to justice, Tumaini Girls Rescue Centre/Ripples International approached the Equality Effect to co-develop a legal advocacy solution to the problem. This led to the 160 Girls project—a legal initiative that aims to achieve justice and protect girls in Kenya from rape. The partners began by initiating litigation on behalf of the girls to secure legal remedies ordering the state to enforce existing laws to investigate and prosecute the cases and hold the rapists accountable as well as to secure protection from sexual violence for girls in Kenya. In a bold and innovative legal move, the girls sought to make a case that failure by the police to enforce existing laws amounted to violation of domestic, regional and international human rights law.

The initiative took on the nature of a public interest case, when means the remedies requested sought to benefit the specified girls' cases as well as to secure legal protection from sexual violence for all girls in Kenya by targeting policy reform and the implementation of existing laws.

Various strategies were utilised in developing the court case. The project partners undertook fundraising and built collaborative networks with other organisations such as the Federation of Women Lawyers (Kenya) and the Kenya National Commission on Human Rights, which were also enjoined in the court case as interested parties. The research and collection of evidence itself took almost two years and was the product of rigorous legal strategy development and consultation drawing on the expertise of Canadian and Kenyan human rights lawyers and advocates.

The results of the initiative were successful on various fronts. In 2013, a Kenyan High Court decision (*C.K. (a child through Ripples International as her guardian and next friend) & 11 others v Commissioner of Police/Inspector General of the National Police Service & 3 others* [2013] eKLR) made legal history by finding that 'The neglect, omission, refusal and/or failure of the police to conduct prompt, effective, proper and professional investigations into the first eleven petitioners' complaints of defilement violates the first eleven petitioner's fundamental rights and freedoms.' The Court then went on to list the various rights that had been violated in the Kenyan Constitution as well as rights in the UDHR, the UN CRC, the ACRWC and the African Charter.

The Court ordered the police to undertake prompt and effective investigations into the rape cases of the girls. It further linked the failure of the police to ensure justice in rape cases as contrary to their constitutional obligation to comply with standards on human rights and fundamental freedoms. The decision has had a direct legal impact, with most of the rape cases that had been neglected or purposefully obstructed investigated and prosecuted, and about 80% have seen a positive outcome.

160 Girls is a long-term initiative and work continues to address perpetrator accountability as well as the root causes of the systemic and epidemic sexual violence experienced by girls. The initiative has had significant policy, institutional and societal impact. For instance, Tumaini Girls Rescue Centre/Ripples International reports that there is increased reporting of rape cases in Meru county, and this is putatively linked to the Court's decision and is a possible indicator of the dwindling social acceptability of sexual violence. The project partners have also established justice clubs in schools through which they sensitise children on child rights and protection.

From an institutional perspective, Tumaini Girls Rescue Centre/Ripples International reports that the decision was well received by the National Police Service, which in fact contacted the Centre on its own initiative seeking details on the rape cases. In an unprecedented development, the Kenya National Police Service approached the Equality Effect to establish a partnership to achieve implementation of the 160 Girls High Court decision. The Equality Effect is now developing and executing the 160 Girls police defilement investigation programme, which was piloted in four counties in Kenya. The pilot proved a success,^{xviii} and the training, incorporating international best practices and infused throughout with human rights law, is now being rolled out across Kenya. In 2017, the UN recognised 160 Girls as an international best practice in advancing women's rights and empowerment. These legal, societal, attitudinal, policy and institutional changes are likely to have a deterrent effect on sexual violence against girls as well as easing access to justice should they occur.

Case study 2. Revenge porn in Zimbabwe: image-based sexual violence and social media

This case study looks at the growing phenomenon of non-consensual leakages of sexually explicit images seeking to shame and distress women publicly. Katswe Sistahood, a Zimbabwe-based organisation, used various strategies to successfully combat this type of GVAW, including a petition to Parliament to generate a responsive law to the particular crime of releasing sexually explicit materials.

Activists in Zimbabwe have decried the growing use of social media platforms for image-based sexual violence. This entails the posting pictures and videos of sexually explicit content that is deemed pornographic by Zimbabwean law, in some countries dubbed the ‘snap of shame’.^c This has become a common practice in Zimbabwe with the advent of social media, affecting women who are public figures and young women in universities, particularly Midlands State University.^{xcix} A number of local celebrities in Zimbabwe have fallen victim to revenge porn over the past few years.⁹⁶ Other women have also suffered from the dissemination of such content. In one instance, a university student was expelled after sexually explicit images were disseminated.^{ci}

Such image-based sexual violence not only violates the rights of women to express themselves in circumstances of privacy but also offends their inherent dignity. It is a form of violence against women that results in mental, physical and even economic violence. Often, the knee-jerk reaction of the public court of opinion in Zimbabwe, set in a highly patriarchal society that frames women’s sexuality within rigid parameters, is to condemn, shame and stigmatise the woman in the pictures or video. Given the societal backlash that follows the dissemination of such images, the risk of mental and psychological torture for the victims is real and can have repercussions for her education and employment and in social terms at both family and community level. There is also the risk of further victimisation caused by unwanted sexual advances and harassment by strangers who may think such women and girls are inviting them by ‘releasing’ the images.

Director of Katswe Sistahood, Talent Jumo, in describing the gender implications of the crime, observed that, ‘When a sex tape is leaked, society will slut-shame and even ostracise the woman while the man is praised for his virility.’ Katswe Sistahood, a movement of young women fighting for the full attainment of SRHR in Zimbabwe, undertook decisive and strategic action against this form of sexual violence. The absence of a specific criminal law in Zimbabwe to prohibit this growing trend is depriving its victims of justice. Katswe Sistahood prepared a petition to ban this type of GVAW.

In many countries this crime is labelled ‘revenge porn’, but legally it does not amount to pornography, and the term itself is a misnomer. Image-based sexual violence is not pornography, but a form of GVAW; it also leads to victim-blaming and distracts attention from the perpetrators.⁹⁷ Globally, some countries now have revenge porn laws;⁹⁸ in Africa, though, for the larger part, countries are yet to specifically recognise revenge porn. In Zimbabwe, while Section 26 of the Censorship and Entertainment Control Act criminalises possession of indecent, obscene or prohibited articles, it does not cover materials released to cause harm or distress. Prosecutors across the continent have to rely on laws prohibiting the broadcasting and distribution of regular pornography, anti-harassment laws, the use of mobile phones to send harassing messages (under the Telecoms Act in Zimbabwe), anti-extortion laws or pornography or anti-obscenity provisions in the law, which are not victim-centred. Katswe Sistahood has found serious gaps in these laws, which do not respond to the specific circumstances of perpetrators and victims of revenge porn.^{cii}

In preparing its petition, Katswe Sistahood undertook consultations with the public. In 2016, it conducted an online survey and focus group discussions on the criminalisation of non-consensual distribution of explicit and intimate images. The survey revealed that 66% of the sample considered this to be a criminal offence. Armed with these public perceptions and statistics in support of its cause, Katswe Sistahood petitioned the Parliamentary Portfolio Committee on Justice, Legal and Parliamentary Affairs to ban ‘revenge pornography’ specifically.⁹⁹ Katswe Sistahood’s petition argued that the growing non-consensual use of explicit images and film footage was intended to ‘humiliate, intimidate, dehumanise and degrade people’s lives in general and women’s lives and livelihoods in particular’. The petitioners also decried the lack of a criminal law protecting the privacy of private communications involving sexual expression from publication without a subject’s consent.

⁹⁶ A sex tape of popular socialite and Zimbabwe’s former Big Brother housemate Pokello Nare with musician Desmond Chideme, popularly known as Stunner, was leaked. Former TV personality Tinopona Katsande also complained that sex tapes had been leaked. Another victim is former Miss Zimbabwe Emily Kachote, who in 2015 was dethroned after nude pictures were reportedly leaked. In 2014, Thabiso Phiri had resigned from the Miss Zimbabwe position three days after pictures were leaked.

⁹⁷ ‘Revenge porn’ is a term used to refer to a partner or ex-partner purposefully publishing privately captured and sexually explicit content without the subject’s consent, as an act of spite or vengeance. The victim may have initially consented to the image creation but without ever intending it to be made public. However, the term has been decried as a misnomer: the act should not fall under the crime of pornography since the victim does not intend to have his or her private acts with an intimate partner exposed to the public. Use of the term can thus lead to victim-blaming of the person in the images rather than blaming the perpetrator who wrongfully circulates such pictures.

⁹⁸ Countries with so-called revenge porn laws include the Philippines, the UK, the US (some states), Australia and Canada, among others. In the UK, for example, the government has created a new criminal offence to ensure this behaviour is fully captured under criminal law. Section 33 of the Criminal Justice and Courts Act 2015 covers the offence of disclosing private sexual photographs or films without the consent of an individual who appears in them and with intent to cause that individual distress.

⁹⁹ Katswe Sistahood relied on the Constitution provision under Section 149 that grants every citizen and permanent resident of Zimbabwe a right to petition Parliament to consider any matter within its authority, including the enactment, amendment or repeal of legislation.

Rather fortuitously, in 2016 Zimbabwe was in the process of enacting a Computer Crime and Cyber Crime Bill that already contained sections on criminalising pornography and child pornography. Katswe Sistahood seized the opportunity to participate in the process and to influence the law to ensure it responded to the concerns of women with regard to the release of sexually explicit content in violation of intimate partner and trust relations. Following the petition, the Cyber Crime and Cyber Security Bill, as it had come to be known, which was under development by the Attorney-General's Office, included provisions to criminalise the leaking of nude pictures of former lovers on social media or online. These amendments were made to the proposed law after public consultations. The Bill contains a provision on revenge pornography that reads as follows:

Section 14: Any person who, with the intent to cause harm or distress or realising that there is a real risk or possibility to cause harm or distress, discloses private sexual or nude photographs and/or films without the person's permission shall be guilty of an offence and liable to a level six fine or imprisonment not exceeding six months or both such imprisonment and fine. It shall be an aggravating circumstance if the photographs and/or film are of a minor.

Katswe Sistahood continues to campaign for an end to the non-consensual distribution of sexually explicit images and for the criminalisation of such acts using social and mainstream media in Zimbabwe.

Case study 3. ECOWAS Court makes first judgment on Maputo Protocol in favour of four Nigerian women

This case study describes the case of violations of the women's human rights of four Nigerian women, which was taken to the ECOWAS Court. This was the first time an African court had ruled on violations of the Maputo Protocol. The case concerns the arbitrary arrest and detention and the verbal, physical and sexual abuse that the four women suffered at the hands of Nigerian law enforcement officials.

The ECOWAS Community Court of Justice was set up following the provisions of the ECOWAS Revised Treaty in its Arts 6 and 15 in 1991. However, the Court came into operation only in August 2002 and the first case was brought in 2004. The Court is based in Lagos, Nigeria, and comprises seven judges appointed by the authority of Heads of State from among citizens of member states for a four-year term. The mandate of the ECOWAS Community Court of Justice is to observe the law and the interpretation and application of the provisions of the Revised Treaty, as well as other legal instruments, including treaties adopted and ratified by ECOWAS states.^{ciii}

On 12 October 2017 the ECOWAS Court ruled in favour of four women, Dorothy Njemanze, Edu Ene Okoro, Justina Etim and Amarachi Jessyforth, against the Federal Republic of Nigeria. The case centred on the violation of the plaintiffs' human rights following physical, sexual and psychological violence perpetrated by law enforcement agents in Abuja state, Nigeria. This is the first time an African court has ruled in breach of the Maputo Protocol.

In 2009, the Abuja Environmental Protection Board (AEPB), a government agency in charge of the sanitation of the city of Abuja, started raiding at night with the aim of removing prostitutes, with the help of the police and law enforcement agents.^{civ} Four women were unlawfully arrested, and detained by the AEPB, the police and the military. Between January 2011 and March 2013, the plaintiffs were arrested several times and accused of being prostitutes by the government security forces. During these encounters, the women suffered verbal, physical and sexual abuse and were labelled as prostitutes for the simple reason that they had been found on the streets at night.^{100 cv}

On 17 September 2014, the four women, with the Institute for Human Rights and Development in Africa (IHRDA), Alliances for Africa, Nigerian Women Trust Fund and the law firm SPA Ajibade, filed a case before the ECOWAS Court (suit no. ECW/CCJ/APP/17/14),^{cvi} with support from Open Society Initiative for West Africa (OSIWA). The women asked for 100 million naira in damages for pain, suffering and harm to their dignity, including physical, mental and emotional trauma, following their arbitrary arrest and detention by agents of the state in Abuja.

The plaintiffs did not file a case at a domestic court in Nigeria; instead, they went straight to ECOWAS, since they did not need to exhaust local remedies to do this. They opted for the ECOWAS Court first because the Maputo Protocol is ratified by Nigeria but not yet domesticated; this would make it difficult (or almost impossible) to get a court in Nigeria to directly apply its provisions: 'We lost two cases in Nigeria (one on citizenship-related discrimination and the other on forced evictions). The courts in both cases held that the rights we argued were violated were not justiciable in that they are not provided in Chapter 4 of Nigeria's constitution.'^{cvi} Second, the plaintiffs felt the ECOWAS Court would be more progressive and open to arguments made related to the duty of states to investigate human rights violations.

In its deliberation, the ECOWAS Court stated that the Nigerian government had failed to acknowledge and protect the rights of the plaintiffs and had violated the following:^{cvi}

- Arts 1, 2, 3, 5, and 18 (3) of the African Charter on Human and Peoples' Rights
- Arts 1, 2, 3, 4(1 and 2), 5, 8 and 25 of the Maputo Protocol
- Arts 2, 3, 5(a) and 15(1) of the Convention on the Elimination of All Forms of Discrimination Against Women
- Arts 2(1), 3, 7 and 26 of the International Covenant on Civil and Political Rights
- Arts 10, 12, 13 and 16 of the Convention against Torture and
- Arts 1, 2, 5, 7 and 8 of the Universal Declaration of Human Rights

The Court found that the Nigerian government had failed to carry out an investigation to ensure that those responsible for the infractions were prosecuted. It also found that the ill-treatment of the plaintiffs in the hands of the AEPB, the Nigerian police and the Nigerian military counted as gender-based discrimination and constituted a violation of the various human rights instruments cited above. Furthermore, the Court found that the government forces' conduct towards the plaintiffs counted as 'cruel, inhuman and degrading discriminatory treatment'.^{cix} The Court also found that the defendants had put forward no evidence to support the claim that the plaintiffs were indeed prostitutes.^{cx}

Following this favourable ruling, three of the plaintiffs were each awarded a sum of 6 million naira. One plaintiff's claim was dismissed for being statute-barred under the Protocol creating the Court.^{cx} Meanwhile, the Court ruling remained mute on the request to order Nigeria to provide structural remedies, including to support services for victims of GVAW and to provide training for judges and law enforcement on prohibition of GVAW.

100 For more information on the background of the case, see www.courtecawas.org/site2012/pdf_files/decisions/judgements/2017/ECW_CCJ_JUD_08_17.pdf

Case study 4. Great Lakes region civil society initiative to garner sub-regional political commitment to addressing GVAW

This case study highlights the so-called Kampala Declaration adopted by the International Conference of the Great Lakes Region, which has been celebrated for providing a strong regional framework on GVAW. Mobilisation, advocacy and engagement of civil society and women's rights organisations, under the leadership of Akina Mama wa Afrika, have been critical in its adoption, and also in pushing for actions needs to further its implementation.

The International Conference of the Great Lakes Region (ICGLR) was established mainly in response to the protracted war in DRC in the 1990s, and regional political instability and conflicts that constituted a major threat to international peace and security.¹⁰¹ It has since evolved and institutionalised into a forum for the promotion of peace, security and development in the Great Lakes region.^{cxii} An initiative of the ICGLR-based CSOs resulted in the *Goma Declaration on Eradicating Sexual Violence and Ending Impunity in the Great Lakes Region* in 2008.^{cxiii} In 2010, an ICGLR Regional Women's Forum was established, with a mandate on GVAW, among other areas.

One critical concern relates to violence against women being utilised as a weapon of war, resulting in women and girls being disproportionately affected by conflict. In response, Akina Mama wa Afrika, the ICGLR Women's Platform and the ICGLR Regional CSO Forum¹⁰² came together to advocate for a special session of the ICGLR Summit of 2011 (to be held in Kampala, Uganda). This special session was to be dedicated to addressing issues of GVAW in the region. From June 2011, under the leadership of Akina Mama Wa Afrika, CSOs in the Great Lakes region, comprising national, regional and international NGOs and human rights organisations,¹⁰³ spearheaded a regional process to mobilise civil society in the region to participate in deliberations leading up to the fourth Ordinary Summit of Heads of State of ICGLR Member States and Special Summit on SGBV. The aim of this advocacy initiative was to achieve concrete commitments on the part of member states towards addressing GVAW in the region. An interesting element of the strategy was that a session of the Heads of States had never previously been dedicated to such a woman-centric theme.

The International Conference of the Great Lakes Region is an intergovernmental organisation composed of 12 member states: Angola, Burundi, CAR, DRC, Congo Republic, Kenya, Rwanda, South Sudan, Sudan, Tanzania, Uganda and Zambia.

This session resulted in the adoption of the *Declaration of the Heads of States and Government of the Member States of the International Conference on the Great Lakes Region* (popularly referred to as the Kampala Declaration). This has been celebrated as providing one of the strongest sub-regional frameworks on GVAW. It focuses on prevention, ending impunity and providing support to victims/survivors. It is a far-reaching instrument that touches on the following areas:

- Increasing financial and technical support for judicial sector reform on women's rights and GVAW eradication, to build institutional capacity and accountability
- Facilitating reporting and documentation of cases
- Fast-tracking prosecution of perpetrators for swift and effective justice
- Integrating GVAW into national planning frameworks and allocating budget lines for prevention and response to ministries of gender, justice, defence and others
- Empowerment of professional bodies and CSOs such as the regional FIDAs to provide support to victims/survivors

The Regional Training Facility (RTF) was set up under the ICGLR *Protocol on the Prevention and Suppression of Sexual Violence against Women and Children* (2006) and the Kampala Declaration. Its mandate is to train and sensitise those who handle cases of sexual violence in the region as provided for under the ICGLR Protocol on Prevention and Suppression of Sexual Violence in the Great Lakes Region.¹⁰⁴ The RTF became operational in 2014 and has conducted a series of trainings for judges, prosecutors, police officers and military personnel, forensic experts and CSOs working on GVAW.

¹⁰¹ The ICGLR emerged out of the conflicts that engulfed the region in the 1990s, including the 1994 genocide in Rwanda and the protracted conflict, instability and war in eastern parts of DRC. The UN Security Council, in Resolutions 1291 and 1304 of 2000, called for an International Conference on Peace, Security, Democracy and Development in the Great Lakes Region, whose outcome was the establishment of the Secretariat in Nairobi under the auspices of the UN and the OAU/AU.

¹⁰² CSO mobilisation comes under the mandate of the Regional Civil Society Forum (RCSF), a space for open and constructive dialogue permitting the identification of common interests and the search for solutions through consultation and cooperation. The RCSF provides for organising regional or thematic meetings around the issues at stake in the International Conference.

¹⁰³ ACFODE, ACORD Uganda, Action Aid Uganda, African Women's Development and Communication Network (FEMNET), Akina Mama wa Afrika, (AMWA), CARE International Uganda, Centre for Citizens Participation in the African Union, (CCP-AU), EASSI, Isis-WICCE, NAWOU, Regional Associates for Community Initiatives, (RACI), International Refugee Rights Initiative (IRRI) EASSI and UWONET.

¹⁰⁴ The ICGLR has developed a number of highly relevant and substantive legal instruments to guide the work of the RTF. These include (1) the Pact on Security Stability and Development in the Great Lakes Region (2006), (2) the Dar es Salaam Declaration on Security, Stability and Development in the Great Lakes Region (2004), (3) the Protocol on the Prevention and Suppression of Sexual Violence against Women and Children (2006), (4) the ICGLR Protocol on Judicial Cooperation (2006), (5) the ICGLR Protocol on Non-Aggression and Mutual Defence (2006), (6) the Protocol on Prevention and Punishment of the Crime of Genocide, War Crime and Crime against Humanity and All Forms of Discrimination, (7) the Goma Declaration (2008) and (8) the Kampala Declaration (2011).

While the Kampala Declaration intends to encourage great reform in addressing GVAW in the region, in practice states are yet to fully implement their commitments. Implementation is important particularly for countries such as Burundi and Sudan that have not ratified the Maputo Protocol and are therefore outside of its norms on GVAW.

Akina Mama wa Afrika has continued to lead civil society in highlighting the Declaration and the actions that need to be undertaken for its implementation. In a convening in 2016 on ways to accelerate implementation of the Kampala Declaration, Akina Mama wa Afrika together with others identified called on governments of the region to undertake the following actions:

- Increase budget allocations to the one-stop centres and ensure they comprehensively support survivors
- Strengthen partnerships between government, CSOs and other actors including the private sector to collectively address GVAW in the region
- Launch and implement a zero tolerance campaign in all member states
- Provide assistance to survivors by liberating and rehabilitating them from trauma and providing conditions favourable for the reconstruction of their lives
- End impunity and bring to book the perpetrators of GVAW

While some states have made progress, as illustrated elsewhere in this report, overall this falls short when compared with the commitments made and the fair amount of time that has lapsed since adoption of the Kampala Declaration.

Case study 5. Shukumisa Campaign: Sonke Gender Justice Advocates for state accountability for sexual violence in South Africa

The Shukumisa campaign is a civil society initiative to track the implementation of South Africa's Sexual Offences Act. The consortium monitors the victim-friendly approaches of hospitals, police stations and courts, to avoid secondary traumatisation of GVAW survivors. Sonke Gender Justice engages in monitoring throughout the service delivery chain, and also works at community level and with victims and their families to ensure substantive justice for victims and survivors of sexual violence.

The prevalence of sexual violence in South Africa has been a source of great concern in the country and regionally. The Criminal Law (Sexual Offences and Related Matters) Amendment Act (Act No. 32 of 2007), also known as the Sexual Offences Act, was passed in recognition of the many forms of GVAW in South Africa, including sexual, physical and psychological violence. South Africa has also established special sexual offences courts and is well known for its one-stop centres for GVAW survivors, the Thuthuzela Care Centres.

Despite this law and these institutional innovations, which have contributed to a rise in conviction rates, victims of GVAW continue to abandon cases because of the systemic challenges they face within the justice system. When this happens repeatedly, it leads to underreporting of the crime and contributes to a climate of impunity.^{cxiv} In a communiqué issued on 18 August 2017, the Commission for Gender Equality voiced its concern around the inconsistencies on systemic issues in the judiciary 'wherein cases of gender based violence take too long to prosecute in the process the victim suffers secondary victimisation'.^{cxv} A major challenge noted in the Report of the UN Special Rapporteur on violence against women on South Africa relates to court hearings and procedures that are not conducted in a victim-friendly conduct, as well as secondary traumatisation caused by insensitivity to victims through reiteration of gender stereotypes by magistrates.^{cxvi} Without appropriate psychosocial support, victims of sexual violence are unlikely to cooperate in processes such as reporting cases to police and facilitating police investigations or court trials. These systemic challenges continue to translate into too low rates of conviction and diminished accountability for sexual violence.^{cxvii}

In 2008, a consortium of CSOs formerly working under the National Working Group on Sexual Offences created the Shukumisa (Shake up) Campaign. The campaign seeks to track the implementation of sexual offences policies and laws, including the Sexual Offences Act of 2007 and the attendant National Instructions (3/2008). Since 2009, the Shukumisa Campaign has regularly monitored hospitals, police stations and courthouses, with a view to determining the extent to which they are complying with the legal regime with regard to victim-friendly approaches. Consortium members have monitored the work of the police in 50 stations in the Western Cape. The value added of such a campaign is that CSOs monitor from a comparative advantage perspective in order to deal with the complex, multi-sectoral problem of access to justice for victims. Monitoring findings of the Shukumisa Campaign are submitted to the South African Police Service, the Department of Justice and Constitutional Development and the Department of Health, in a bid to improve their response to victims of sexual violence as mandated under the Sexual Offences Act.

Sonke Gender Justice, one of the consortium members, has actively monitored cases right through the service delivery chain, covering police stations, prosecutors and courts, to ensure conformity with the legal requirements for victim-friendly services. It has also conducted policy scans to identify critical service delivery standards and action points to support the Shukumisa Campaign. Sonke further realised that forensic departments did not capture the details of sexual violence cases well, leading to inconclusive forensic evidence and a low prosecution rate. Consequently, it added forensic departments to its list of monitoring targets.

At the level of communities, the organisation educates community action teams on court processes, and works on raising consciousness around GVAW. Community action teams identify issues and cases at the community level to escalate to Sonke. Sonke thus allows women and victims to tell their stories and open up about sexual violence, which has been very helpful in establishing patterns, wherever an offender has attacked multiple victims.

Sonke also works with the Shukumisa Campaign partners during court hearings to monitor the quality of case investigations. In one example given, a former African National Congress youth leader had beaten his partner to death. Obtaining information in this case was difficult because victims were easily intimidated. Sonke pressured law enforcement agencies to play their role but also assisted the prosecutors in identifying gaps. In their words, 'We met the national prosecuting authority in this case and all were aware that we were monitoring the case as it played out. We asked the judge to recuse himself and we got the right judge for the case.'

With respect to court hearings, Sonke also meets victims and their family members and gives them moral as well as psychosocial support. It then mobilises members of the community to support victims when they report cases or attend hearings in court. Together with Sonke staff, who reinforce victims and give them institutional support, community members attend hearings wearing matching tee-shirts in solidarity. This makes judicial officers aware that a highly visible 'constituency' will be following court processes closely to ensure fair proceedings. Sonke notes that this has been effective in averting procedural injustices in many cases. For example, a corporal punishment case that Sonke was monitoring was on 'Special Assignment' on national TV in 2017, and was one of the most viewed programmes in South Africa. Involvement of the media plays a major role in bringing visibility to issues.

Case study 6. Cross-sector coordination in the management of sexual violence: Kenya's Sexual Offences Act implementation workshop

This case study highlights the importance of cross-sector coordination in the implementation of Kenya's Sexual Offences Act. It refers to a convening which, for the first time, brought together over 80 government and civil society representatives involved in the provision of legal, medical and other services to survivors of sexual violence. The workshop aided in coordinating among these many actors, and concretely contributed to the adoption of a new and improved Post-Rape Care Form for capturing medical evidence.

Kenya's 2006 Sexual Offences Act revolutionised the issue of accountability for sexual violence against women and girls in Kenya. Before this, the legal and social markers required to address sexual violence were weak (e.g. the requirement of corroboration to prove a sexual offence, which is often carried out in private; wide discretionary sentencing powers, which, when misused, served to minimise the crime and embolden perpetrators). The Act contains critical progress markers such as the categorisation of sexual violence as a crime of violence as opposed to a crime against morality, thereby heightening accountability. The scope of acts that qualify as sexual offences was also expanded. The Act also provides for minimum sentences and envisages the provision of psychosocial support and witness protection, thereby taking a survivor-centric approach.

However, in practice, implementation of the Act was weak, owing to, among other reasons, a lack of cross-sector coordination among the various actors envisaged in the ideal accountability process. Various actors are related to the pre-investigation, investigation, prosecution and trial, and post-trial stages of a sexual offence case: health care providers, lawyers, police, forensic scientists, prosecutors, magistrates, judges and community advocates. In reality, a survivor may encounter many others, such as community members and informal justice actors. All these have a role to play that can either enhance or impede a survivor's access to treatment and justice. Their coordination is critical to ensure that the survivor receives speedy and effective treatment, the right information and evidence are collected at each stage and the survivor is not re-victimised by having to unnecessarily narrate their ordeal to several actors owing to poor documentation or coordination.

In response to this challenges, the Human Rights Center of the University of California, Berkeley, together with the now former Task Force on the Implementation of the Sexual Offences Act, FIDA Kenya, LVCT, COVAW, ICJ Kenya, CREAM, AIDS-Free World and GIZ Kenya, coordinated a convening of relevant stakeholders. This brought together over 80 participants from government and civil society who worked directly or indirectly on sexual violence. The initiative took a collaborative multi-sectoral approach. This was the first time that all the providers and stakeholders a survivor would interact with in seeking treatment and justice had been in the same room in order to diagnose and redress critical breakages and links between the sectors. The direct results of the workshop accordingly included the identification of individual sector as well as linkage challenges and related recommendations.

The workshop also aided in securing critical reforms with regard to a Post-Rape Care (PRC) form to be used in the documentation and presentation of medical evidence of sexual offences in court. Prior to this, medical evidence was captured only on the P3 form, which was utilised by police officers for any crime that results in the need for a medical examination. It is filled first by a police officer then by a police doctor; therefore, it is almost always completed retrospectively as a survivor often presents herself for treatment prior to making a report. The PRC form, on the other hand, is filled out by health care providers when they receive a survivor and is designed to capture various physical and psychosocial information specific to a survivor of sexual violence. In this regard, it enhances the chances of prompt and credible data; this facilitates the presentation of stronger evidence in court and consequently higher rates of prosecution of perpetrators and accountability for violence against women.

It must be noted here that numerous and prior advocacy efforts particularly in the health and medico-legal sector led to the development of the PRC form. The workshop provided a critical impetus by way of discussions with crucial stakeholders such as the Attorney-General that thereafter gazetted the use of the form, thereby giving it legal recognition. This thus exemplifies the intended outcome of the workshop in terms of cross-sector coordination. Documentation of evidence in sexual violence is an aspect that relies on the full coordination and effectiveness of both health providers and legal actors such as the police. Undoubtedly, this development's long-term effect will be to enhance survivors' access to treatment and justice and overall accountability for and the consequently dwindling of sexual offences.

Case study 7. The Safe Ride Campaign: making travel safe for women and girls in South Africa

The Safe Ride Campaign is about sensitisation and education on sexual violence in the public transport industry in South Africa. Sonke Gender Justice has worked with the national association of drivers to seek strategic engagement with drivers at national and provincial level. Using peer educators, the media and communication tools, the campaign seeks to raise awareness on the negative impact of sexual violence on victims, and make public transport safer for women and girls.

About 15 million passengers use public transport each day in South Africa, and yet many women do not feel safe while using these services, particularly at night. Women experience sexual harassment, such as touching of body parts, coarse language and verbal abuse and worse. Incidents of verbal abuse, physical violence, sexual assault and rape, including gang rape, of girls and women at the hands of public transport drivers and queue marshals have been recorded in many parts of South Africa. Rapes and sexual assaults are carried out in taxis or in premises or bushes close by. Apart from being a violation of the rights of women and girls to security and bodily integrity, this has the result of limiting women's mobility, particularly for those travelling alone or at night.

The control of women's expression and their sexuality is evident, as those who do not conform to societal norms of modest dressing or behaviour face a backlash, including violence, from taxi drivers and marshals. A video of a taxi driver harassing a woman on the way to Sunninghill went viral on social media in November 2015.^{cxviii} In another highly publicised incident in 2011, around 50 taxi drivers harassed two teenage girls about their skirt length, taunting and groping them and taking pictures of them with their mobile phones.^{cxix}

Sonke Gender Justice created the *Safe Ride Campaign* in order to reduce sexual and gender-based harassment and violence in taxis and at taxi ranks. The campaign's main objective is to strategically engage the South African taxi industry—associations, owners and drivers—and key government departments to promote respectful and non-violent behaviour towards customers. As such, it seeks to contribute to the prevention of GVAW, particularly sexual violence, and promote gender equality and safety of women and children.

On 17 August 2016, Sonke and the South African National Taxi Council launched the 12-month campaign in Gauteng, the Eastern Cape and the Western Cape at high-risk taxi rank sites. Sonke realised it would be near impossible to prevent the harassment of women without engaging men. Campaign strategies involve educating taxi drivers, owners, marshals and associations on human rights and particularly on GVAW. Taxi commuters have also been educated on the forms of sexual violence and appropriate responses.

Buy-in from the South African National Taxi Council was critical. Sonke engaged with the council leadership for over a year just to share the concept with them and to help them understand their role. It was easier to talk to the national body, which suggested a national workshop with provincial leaders. The campaign was launched at a half-day workshop at a taxi park rank. The president of the Taxi Association led the launch, to give legitimacy to Sonke's campaign and increase buy-in. There was positive media support for the campaign, which helped drum up publicity and public discourse on the issues. In the next phase, Sonke intends to reach out to other local taxi associations and work with the lower leadership of taxi associations.

Thereafter, Sonke had help to launch the campaign in other provinces. Seven community dialogues were conducted during the project period: in Soweto, Tembisa, Vosloorus, Ivory Park and Mulberton, involving women commuters, taxi drivers, queue marshals, taxi owners and national, provincial and local government representatives. The organisation conducted dialogues at taxi ranks and had one-on-one talks with drivers, distributing informational pamphlets and tee-shirts. Sonke also developed a video of sexual assault victims talking about their experiences and the impacts they had had on them. This video was used during the community dialogues and was effective in evoking sentiments of regret and a desire to commit to behavioural change.

Sonke also used a positive role model of masculinity to interest the taxi drivers in conversation. One campaign actor was a former professional football player whom taxi drivers recognised and identified with, making it easier to engage them—an ambassador, in a way. In the interactions with the taxi drivers, a number of them have explicitly condemned rape, including gang rape, and negative masculinity behaviours portrayed by some of their fellow taxi operators or queue marshals. Ten Taxi Rank Action Teams have been formed, made up of volunteers who work with the Sonke teams in the taxi ranks as mobilisers and peer educators. This paves the way for a sustainable and sustained campaign to ensure women can travel in environments that respect gender equality and their bodily integrity.¹⁰⁵ Though the work is challenging, Sonke intends to spread its outreach to other taxi associations and lower levels of leadership in a sustained effort to raise drivers' awareness on eliminating violence against women.

¹⁰⁵ The campaign faced a number of challenges. Taxi ranks pay taxes to their municipality, and getting permission from the municipality was a very bureaucratic process and this caused some delays. Some of the drivers approached had a reputation as being very dangerous and were arrogant in their response. Taxi drivers also wanted money to attend the workshop.

Chapter 5 ENDNOTES

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