

SPEAKING NOTES BY

**DR. ATHALIAH L. MOLOKOMME
ATTORNEY-GENERAL
OF THE REPUBLIC OF BOTSWANA**

AT THE

**HIGH- LEVEL PLENARY DISCUSSION
ON COMPLEMENTARITY**

**AT THE 14TH SESSION OF THE ASSEMBLY OF STATES
PARTIES**

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ASP President,
ICC President,
Honourable Minister,
Moderator,
Excellencies,
Distinguished participants,

1. It is my pleasure to have been accorded the opportunity to participate in this special discussion on **“exchange of views on strategic action to enhance national capacity to investigate and prosecute sexual and gender-based crimes that may amount to Rome Statute crimes.”** I do so in support of our role as co-focal points for complementarity, and thank the Government of Sweden for all their efforts in supporting this initiative.
2. I am especially gratified to note that the two thematic topics are focused on ensuring access to justice, and enhancing empowerment of victims of sexual and gender based crimes. These two themes are of critical importance for two reasons, firstly because they are victim focused, and secondly because they go beyond the more commonly discussed - but often inadequate issue - of enacting laws and policies to address these heinous crimes.

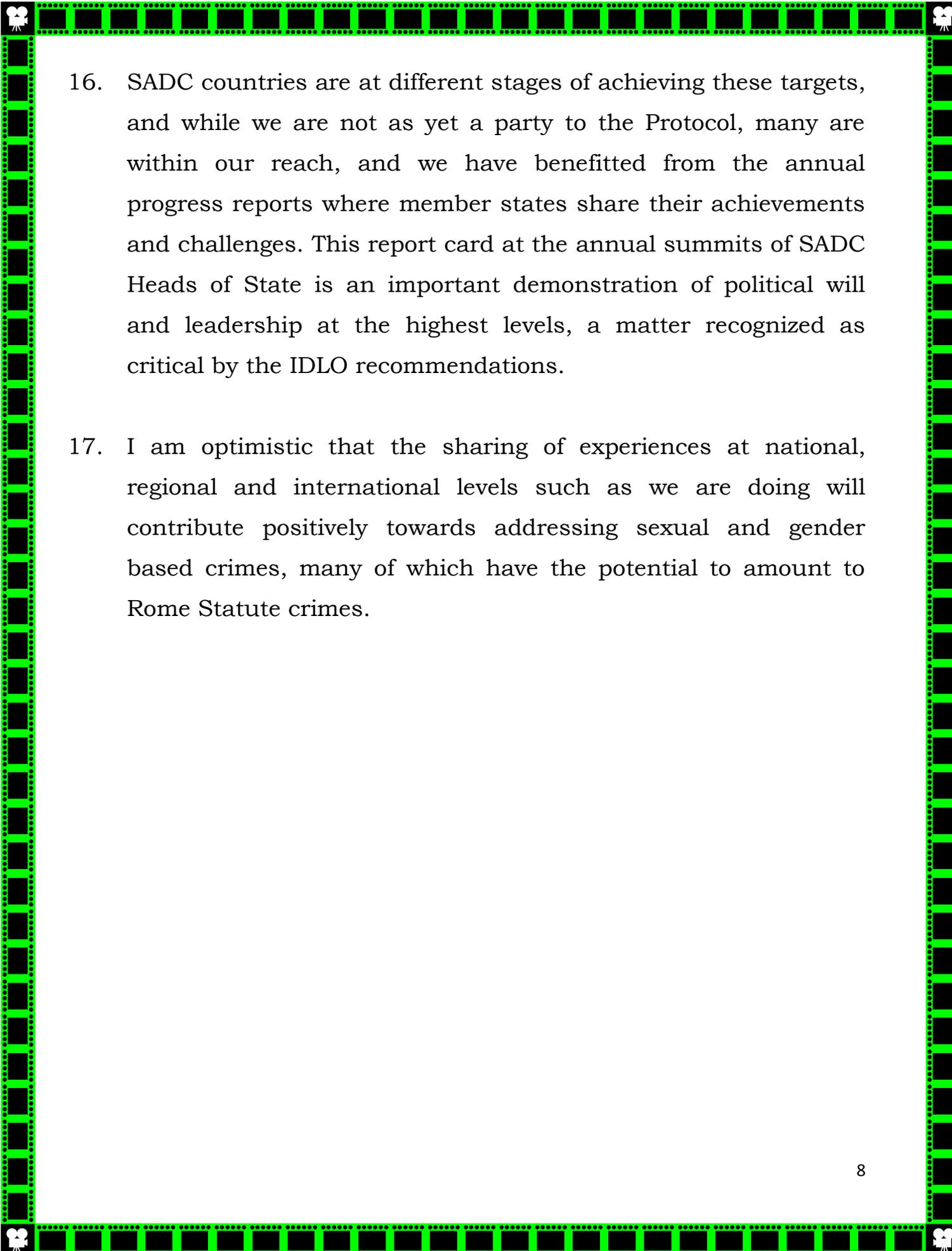
3. As we are all aware, even before we begin to discuss the international aspects of sexual and gender based crimes, gender-based violence is an endemic phenomenon that cuts across all societies, cultures, and regions. It knows no peace or war time, colour, social and economic status, and it is deeply rooted in the unequal relations of power between women and men in most, if not all societies.
4. This is why the subject is such an appropriate one for complementarity; unless action is taken at national level to address its root causes, its various forms and manifestations, strategies and interventions at regional and national level will not be as effective as they should be.
5. This is why the recommendations of the IDLO report, which have been conveniently divided into three categories, are such a relevant and comprehensive approach to this matter. They show the importance of adopting an integrated, multi stakeholder view of these issues, which is more likely to yield positive results.
6. As the concept paper explains, the purpose of this discussion is *'to discuss and exchange national experiences and practices, challenges and achievements, in the prosecution of sexual and gender based crimes as Rome Statute crimes, and to identify and enhance measures to address these crimes at the national level'*.

7. Against the background of what I stated in my introductory remarks, it is clear that one need not be based in a jurisdiction where atrocity crimes have occurred in order to understand the issues, or fashion appropriate interventions. For the basis of sexual and gender based violence and crime is the same: an exercise of power by the powerful over the powerless.
8. Our concept paper similarly observes that sexual and gender based violence has not always attracted enough attention from law enforcement and justice mechanisms as atrocity crimes. I would go further to say that many of our national judicial systems do not give sufficient attention to sexual and gender based violence as a crime in the first place – these are seen as social and private issues, or at best soft or secondary crimes. This is replicated at regional and international level, as reflected in the slow pace at which gender issues and gender equality were recognized as human rights. I must observe that international criminal law is an exception in this regard, and must commend the efforts of the Office of the Prosecutor for its sterling efforts in mainstreaming gender early in its work.
9. The so called hard crimes or mainstream crimes such as murder, robbery, burglary, theft and more recently, money laundering and human trafficking, are often given priority by policy makers and law enforcement.

10. This common trend is not only wrong because it minimizes or trivializes sexual and gender based crimes, but also because it fuels stigmatization, leads to non-reporting or under reporting by victims who may themselves begin to doubt whether they have in fact, been violated. This is why it is indeed necessary, in addition to increasing penalties, changing laws, and addressing gaps in the legal framework, removing barriers to justice etc, we need to also focus on the empowerment of victims of these crimes.
11. The lessons we have learnt in Botswana in dealing with sexual and gender based crimes are indeed similar to those experienced in other countries. Our general approach has been to amend our Penal Code to increase penalties for offences such as rape, defilement and other sexual offences. The Criminal Procedure & Evidence Act was also amended to introduce in-camera hearings in courts for sexual offences.
12. In addition, the police responded by providing private special facilities at police stations where sexual crimes can be reported, creating a victim friendly system that protects rather than victimizes. The police in Botswana have been quite exemplary in this regard, collaborating with NGOs to mount campaigns and activities during the annual 16 days of activism against gender based violence. Gender sensitization and training of police officers, and to a lesser extent, judicial officers has also been conducted.

13. The challenge in all these efforts has been sustaining all these interventions, which have tended to be ad hoc rather than part of a regular program of activities that is mainstreamed into the day to day work and budgets of stakeholders. This includes providing resources for facilities that take care of victims of sexual and gender based crimes, which tend to be run by NGOs who are poorly resourced.
14. Another challenge we have encountered is that in addition to working at policy level, there is need to work at the household and community levels where much sexual and gender based violence takes place, but is concealed due to stigma and shame. Very few organizations work in this area, and many more need to be encouraged and resourced. I would like to commend civil society organizations in Botswana, regionally and internationally for their work, and encourage more men to participate in lobbying and advocacy in this field.
15. Before I conclude, I would like to say something about the importance of working at the regional level to combat sexual and gender based crimes, especially in view of the transnational nature of crimes such as human trafficking. The SADC Protocol on Gender and Development, which aims at eliminating Gender Based Violence at every level has set six specific targets:

- Enact and enforce legislation prohibiting all forms of gender-based violence;
- Ensure that the laws on gender based violence provide for the comprehensive testing, treatment and care of survivors of sexual assault;
- Review and reform their criminal laws and procedures applicable to cases of sexual offences and gender based violence;
- Enact and adopt specific legislative provisions to prevent human trafficking and provide holistic serviced to the victims, with the aim or re-integrating them into society;
- Enact legislative provisions, and adopt and implement policies, strategies and programmes which define and prohibit sexual harassment in all spheres, and provide deterrent sanctions for perpetrators of sexual harassment; and
- Adopt integrated approaches, including institutional cross sector structures, with the aim of reducing current levels of gender based violence.

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16. SADC countries are at different stages of achieving these targets, and while we are not as yet a party to the Protocol, many are within our reach, and we have benefitted from the annual progress reports where member states share their achievements and challenges. This report card at the annual summits of SADC Heads of State is an important demonstration of political will and leadership at the highest levels, a matter recognized as critical by the IDLO recommendations.

 17. I am optimistic that the sharing of experiences at national, regional and international levels such as we are doing will contribute positively towards addressing sexual and gender based crimes, many of which have the potential to amount to Rome Statute crimes.