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**Fourteenth session**

The Hague, 18-26 November 2015

**Report of the Bureau on complementarity**

**Note by the Secretariat**

Pursuant to resolution ICC-ASP/13/Res.5 of 17 December 2014, annex 1, paragraph 12, the Bureau of the Assembly of States Parties hereby submits for consideration by the Assembly the report on complementarity. The present report reflects the outcome of the informal consultations held on the topic with the Court and other stakeholders.

## I. Background

1. At its first meeting, the Bureau appointed Botswana and Sweden, under a silence procedure, as *ad country* focal points, on 18 February 2015. As such, Botswana and Sweden are focal points in both The Hague Working Group and the New York Working Group in the lead up to the fourteenth session of the Assembly.

2. At the thirteenth session of the Assembly, States Parties resolved to continue and strengthen, within the appropriate fora, effective domestic implementation of the Statute to enhance the capacity of national jurisdictions to prosecute the perpetrators of the most serious crimes of international concern.<sup>1</sup> Consequently, the subsidiary bodies of the Assembly and the organs of the Court were essentially given the following mandates: The Bureau was requested “[...] to remain seized of this issue and to continue the dialogue with the Court and other stakeholders on complementarity, including on complementarity related capacity-building activities by the international community to assist national jurisdictions, on possible situation-specific completion strategies of the Court and the role of partnerships with national authorities and other actors in this regard; and also including to assist on issues such as witness protection and sexual and gender-based crimes”. The Secretariat of the Assembly of States Parties (“the Secretariat”) was mandated to, within existing resources, continue to develop its efforts in facilitating the exchange of information between the Court, States Parties and other stakeholders, including international organizations and civil society, aimed at strengthening domestic jurisdictions, and to report to the fourteenth session of the Assembly on further progress in this regard.<sup>2</sup> The Court, while recalling its limited role in strengthening national jurisdictions, was encouraged to continue its efforts in the field of complementarity, including through exchange of information between the Court and other relevant actors.<sup>3</sup>

## II. General findings

3. The Rome Statute creates a system of criminal justice designed to ensure that there is no impunity for the most serious crimes of concern to the international community as a whole due to the unwillingness or inability of States themselves to investigate and prosecute the perpetrators of these crimes. This system is based on the principle of complementarity as enshrined in the Statute, which means that the Court will intervene only when States are unwilling or genuinely unable to carry out the investigation or prosecution of these crimes.

4. It is generally understood by States Parties, the Court and other stakeholders that international cooperation, in particular through rule of law development programmes aimed at enabling domestic jurisdictions to address war crimes, crimes against humanity and genocide, may contribute to the fight against impunity for such crimes. Such cooperation has been described as “positive complementarity” or complementarity activities. National ownership is essential and a requirement to engage in, and ensure the success of, such activities.

5. Financial contributions to development programmes and to civil society are deemed highly important to promote complementarity. A number of countries have allocated development cooperation resources to promote the strengthening of national judicial capacity to address Rome Statute crimes.

6. In 2015, a number of meetings and informal discussions on the issue of complementarity in relation to sexual and gender based crimes (SGBC) have been held with relevant stakeholders, including States, the organs of the Court as well as with representatives of civil society.

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<sup>1</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Thirteenth session, New York, 8 – 17 December 2014* (ICC-ASP/13/20), vol. I, ICC-ASP/13/Res.5, para. 75.

<sup>2</sup> *Ibid.*, annex 1, para. 12.

<sup>3</sup> *Ibid.*, para. 81.

7. In addition, in the margins of the thirteenth session of the Assembly, on 11 December 2014, Sweden and the United Kingdom, in cooperation with the Office of the Prosecutor (OTP), organized a side event on “The OTP’s Policy Paper on Sexual and Gender-Based Crimes: Putting Words into Action”. The event gathered government representatives, experts and high-level officials from the Court for a panel discussion on the implementation of the OTP Policy, adopted by the OTP in June 2014. The important role of civil society was highlighted, and how partnerships between key stakeholders, including with governmental authorities, can support the implementation of the Policy and strengthen the fight against impunity for SGBC.

8. On 24 March 2015, the co-focal points held the first informal consultations on complementarity within The Hague Working Group where the first draft of the programme of work leading up to the fourteenth session was presented in accordance with the roadmap for facilitations.<sup>4</sup> The co-focal points announced their intention to organize two workshops at national level, in two different continents, one in Uganda and one in Guatemala, to stress that these crimes occur all over the globe. These workshops would explore ways to address existing barriers preventing the effective investigation and prosecution of sexual and gender-based violence (SGBV) related crimes in times of conflict and highlight national undertakings to address impunity for these crimes.

9. Some delegations in The Hague Working Group expressed strong support for the initiative of organizing workshops at the national level focusing on SGBC. Other delegations, however, while recognizing the devastating nature of SGBC, voiced concern that such a focus could establish a hierarchy amongst victims and, therefore, called for the inclusion of a broader range of topics in the discussions. There was also a call for other issues contained in the mandate, such as witness protection, to be considered by the co-focal points.

10. The co-focal points stressed that the intention was not to establish a hierarchy amongst victims or to say that victims of SGBC were more important than other victims but rather to raise awareness to a group of victims that, in the view of the co-focal points, have been underemphasized in the past since sexual and gender-based crimes tend to be overlooked and not adequately addressed by the criminal justice system. Further, they emphasized that the focus on SGBC would take a comprehensive approach, including issues of witness protection.

11. On 25 March 2015, the co-focal points organized an expert roundtable discussion on SGBC followed by a public panel discussion, together with The Hague Institute for Global Justice. The roundtable gathered a group of leading experts and practitioners from international and national legal institutions, donors, academia and non-governmental organizations for an in-depth discussion on how to strengthen national judicial systems that adjudicate on SGBC. Emphasis was placed on exploring how collective efforts by different actors of the international community can contribute most effectively in the fight against impunity for these crimes and especially how needs in this area can be linked to capacity-building in the broader area of rule of law.

12. Furthermore, on 15 June 2015 the co-focal points organized a meeting with a number of non-governmental organizations in New York to share experiences and practices on complementarity-related activities and to learn more about national developments in this regard. Officials from the cabinet of the President of the Assembly were present. The presentations highlighted the importance of national legislation incorporating the crimes and general principles of the Rome Statute into domestic law and full implementation of such laws in national proceedings.

13. The workshops on “Combating Sexual and Gender-Based Mass Atrocity Crimes at National Level” were held on 24 and 25 June 2015 in Antigua, Guatemala, and on 17 August 2015 in Kampala, Uganda, respectively. The workshops gathered government representatives, high-level officials from the national justice systems, national and

<sup>4</sup> ICC-ASP/13/Res.5 annex IV, which reads: “[...] By end of March: [...] Submission by each facilitator and/or focal point of a program of work to the Coordinator of their Working Group, containing a timeline including a set of goals to be achieved until the commencement of the Assembly session, as well as, if possible, scheduled meetings [...].”

international representatives, including from the OTP, civil society and other relevant stakeholders for in-depth discussions on how to advance accountability for SGBC by identifying key experiences and information sharing. The workshop in Guatemala was co-organized by the Embassy of Sweden in Guatemala and the Unión Nacional de Mujeres Guatemaltecas (UNAMG). The workshop held in Kampala was co-organized by the Embassy of Sweden in Uganda and the Directorate of Public Prosecutions of Uganda, together with the International Development Law Organization (IDLO). The workshops were funded by Sweden, with the support of IDLO. Summaries of the proceedings of these workshops are contained in annexes II and III, respectively.

14. On 16 September 2015, the co-focal points held the second informal consultations on complementarity within The Hague Working Group. The Swedish Ambassador to the Netherlands, H.E. Mr. Per Holmström, opened the meeting and provided an update on the latest activities of the facilitation and a brief outline of the planned meetings ahead of the preparations for the fourteenth session of the Assembly. The Working Group received a debriefing on the workshops in Guatemala and Uganda by representatives from IDLO and the Department for International Law, Human Rights and Treaty Law, Ministry for Foreign Affairs of Sweden, as well as officials from the Office of the Prosecutor.

15. At the outset, the Chair recalled the first informal consultations in March 2015 where the co-focal points had indicated their intention to organize national workshops focused on SGBC. Emphasis was placed on the demand-driven character of the workshops and the existing cooperation between Sweden and the Governments of Guatemala and Uganda. In this regard, it was stressed that the workshops were organized in close collaboration with national stakeholders in Guatemala and Uganda, accentuating the importance of national commitment, ownership and the willingness to share national experiences.

16. Following the Chair's introduction, the representative of IDLO announced the intention to publish a short report on the outcome of the workshops, including a set of recommendations for further action.

17. The representatives from the Department for International Law, Human Rights and Treaty Law, Ministry for Foreign Affairs of Sweden and the Office of the Prosecutor underlined the value of gathering victims of SGBC, practitioners in the domestic systems including representatives from governments, justice sector and civil society for a holistic discussion on ways forward. The need to ensure access to justice for all and the empowerment of victims was addressed at length.

18. Some delegations expressed support for the focus on SGBC and emphasized that sexual crimes and gender-based violence is a widespread problem of concern to the international community at large. In this regard, the topic was seen as pertinent and timely and some delegations welcomed a broader policy discussion on the topic at the Assembly of States Parties.

19. However, a continued concern that the focus on sexual and gender-based crimes could create a hierarchy among victims was again voiced. The co-focal points reassured States that it was not their intention to place the different categories of victims into a hierarchy but rather to place emphasis on the nature of SGBC which, as a result of prevalent power structures, often put the stigma and shame on the victims – instead of on the perpetrators.

20. Although experiences from the national judicial systems concerned SGBC in times of conflict, the lessons learned from national prosecutions and investigations could serve as examples for State Parties on a broader scale for other types of Rome Statute crimes.

21. States Parties and the Court have expressed the view that the role of the Court itself is limited in actual capacity-building for the investigation and prosecution of Rome Statute crimes "in the field". Rather, this is a matter for States, the United Nations and relevant specialized agencies, other international and regional organizations and civil society. The Court can, however, in the course of implementing its mandate within the framework of the Rome Statute, in particular article 93, paragraph 10, upon request, share information with and assist national jurisdictions. The Assembly of States Parties has an important role to play in continuing the dialogue on the efforts of the international community in

strengthening national jurisdictions through complementarity activities, thereby enhancing the fight against impunity.

22. It is important to recall that issues arising from the admissibility of cases before the Court under article 17 of the Rome Statute all remain a judicial matter to be addressed by the judges of the Court. Initiatives by State Parties to strengthen national jurisdictions to enable them to genuinely investigate and prosecute the most serious crimes of concern to the international community as a whole should always preserve the integrity of the Rome Statute and the effective, independent functioning of its institutions.

### **III. The President of the Assembly of States Parties, and the Secretariat**

23. The Assembly of States Parties is the custodian of the Rome Statute system. While the Assembly itself has a very limited role in strengthening the capacity of domestic jurisdictions to investigate and prosecute serious international crimes, it is a key forum for matters of international criminal justice. Combating impunity both at the national and the international level for the most serious crimes of concern to the international community as a whole is the core objective of the Statute.

24. The promotion of complementarity and national capacities of States is one of the four priorities of the President of the Assembly, H.E. Mr. Sidiki Kaba. In this respect, he has undertaken high-level bilateral contacts with States Parties in order to raise awareness and establish a dialogue on the means to reinforce domestic capacities. Throughout 2015, the President of the Assembly has travelled to States Parties to meet respectively with H.E. Mr. Ibrahim Boubacar Keita, President of the Republic of Mali; with H.E. Mr. Alpha Condé, President of the Republic of Guinea; and with H.E. Mr. Uhuru Kenyatta, President of the Republic of Kenya. During his visit to Addis-Ababa, the President of the Assembly met with H.E. Mrs. Nkosazana Dlamini-Zuma, Chairperson of the African Union Commission, and other stakeholders to exchange on the need to strengthen national jurisdiction of African States.

25. On the occasion of the Day of International Criminal Justice, the President of the Assembly convened in Dakar, Senegal, a regional conference on “Sovereignty of States and International Criminal Justice” with a primary focus on complementarity. In parallel, training for journalists from the Economic Community of West African States (ECOWAS) and other African sub-regions aimed at enhancing the capacity of media professionals to cover judicial developments at the national levels.

26. In the margins of the high-level segment of the 70<sup>th</sup> session of the United Nations General Assembly, the President of the Assembly engaged in bilateral meetings at the ministerial levels with States Parties such as Bolivia, Ecuador, Italy, Namibia, Nigeria and Tunisia in order to encourage the adoption of measures to reinforce their own and other States Parties capacities.

27. Further, considering that the adoption of implementing legislation that enables States to investigate and prosecution at the national levels the crimes under the Rome Statute is fundamental to enable the principle of complementarity, the President has encouraged and offered the assistance of the Assembly to those States Parties that have accepted, in the framework of the Universal Periodic Review of the UN Human Rights Council, to implement the Rome Statute nationally.

28. The Secretariat of the Assembly has continued to develop its outreach, information-sharing and facilitating function.<sup>5</sup> Given that this function has been established within existing resources, there are limits to what can be achieved. The Secretariat continues to update the internet portal for complementarity and to facilitate the exchange of information between relevant States and stakeholders.

<sup>5</sup> ICC-ASP/13/30, annex II, Report of the Secretariat on complementarity.

## **IV. The Court**

29. As has been stated, the role of the Court in building domestic capacity for the prosecution of the most serious international crimes is limited. From a judicial point of view, complementarity has a specific meaning relating to the admissibility of cases before the Court. This remains exclusively a judicial issue.

30. Nevertheless, the Court has extensive investigation and prosecutorial experience and expertise. In addition, concerning situation countries, the Office of the Prosecutor continues to gather knowledge and develop expertise on the national judicial system and has thoroughly investigated the crimes that have occurred. Taken together, this provides opportunities for the Court to, within the framework of the Rome Statute, in particular article 93, paragraph 10, upon request, share information with and assist national jurisdictions. Naturally, this has to be done bearing in mind the requirements of the Statute as well as other relevant factors such as the need to protect witnesses and preserve the integrity of evidence collected. In the same way, as reiterated by the States Parties in the omnibus resolution, the Court has been called on to benefit from the experiences and lessons learned by States that have themselves investigated and prosecuted Rome Statute crimes.

31. During its informal consultations, The Hague Working Group received presentations by Court officials who had participated as experts in the workshops in Guatemala and Uganda. Although the Court had no previous experience from Guatemala, the workshop proved to be useful as the lessons learned from national investigations and prosecutions could contribute to the work of the OTP.

## **V. Broader efforts of the international community**

32. In addition to discussions and information-sharing and facilitation within the Assembly and by the Court, various actors organize a remarkable number of activities relevant to complementarity and capacity-building for fighting impunity for the most serious crimes of concern to the international community as a whole. States Parties have received updates on some of these, and more comprehensive information will be available on the Secretariat's complementarity web portal.

33. Apart from general activities undertaken at the United Nations and other international and regional organizations, a myriad of concrete capacity-building projects are being implemented around the world, not least in countries in or emerging from conflict. These activities are carried out both by States, international and regional organizations and civil society.

34. As an example of these many activities, on 18-19 May 2015 Africa Legal Aid (AFLA) organized a symposium entitled "Universalizing the Rome Statute of the International Criminal Court" in Johannesburg, South Africa. The symposium gathered high-level participants from the Court, State Parties, representatives from civil society and other relevant stakeholders for discussions on a set of issues, including complementarity, focusing in particular on the importance of capacity-building and advocacy initiatives to improve national implementation of the Rome Statute. Further, AFLA has announced its intention to organize a follow-up seminar in Dakar on 20-21 October 2015, entitled "International Criminal Justice and the Evolving Concept of Universal Jurisdiction" with a panel on "Emerging Trends of Complementarity".

35. In addition, Justice Rapid Response (JRR) has, since becoming operational in 2009, assisted in a number of missions to help improve the ability of the international community to end impunity for Rome Statute crimes using its standby roster of international experts, including a SGBV Justice Experts Roster developed in partnership with UN Women. In addition, JRR has developed a Complementarity Programme to assist directly with investigations of Rome Statute crimes at the national level. A pilot project of the Complementarity Programme is currently being carried out together with the Government of Mali.

36. Further, on 16 September 2015, the “Prosecuting Conflict-related Sexual Violence (PSV) Network” was launched at the International Association of Prosecutor’s (IAP) Annual Conference in Zürich, Switzerland. The concept for the PSV Network was a result of the legacy work recently completed in the Office of the Prosecutor of the International Criminal Tribunal for the former Yugoslavia (ICTY) and is designed to facilitate sharing expertise and ideas towards the collective improvement of approaches to prosecuting sexual crimes in times of conflict.

37. The United Nations, international and regional organizations, States and civil society are encouraged to mainstream these capacity-building activities aimed at strengthening national jurisdictions with regard to investigating and prosecuting Rome Statute crimes into existing and new technical assistance programmes and instruments, in realms such as human rights, development, and the rule of law. These efforts should continue to be done in such fora, rather than by the Court or in the Assembly of States Parties, which have a limited role for such purpose.

## **VI. Conclusion**

38. The above highlights the importance of continued efforts, within the appropriate fora, in strengthening national capacity for investigating and prosecuting Rome Statute crimes, bearing in mind the limited contributions that can be made by the Assembly and its Secretariat, as well as the Court itself in that regard. Ensuring that national judicial systems are able to deal with the most serious crimes of concern to the international community is vital for making the Rome Statute system work, ending impunity for these crimes and preventing their reoccurrence.

39. In this context it is recommended that the Assembly adopt the draft provisions on complementarity contained in the annex to this report. [In addition, some delegations recommended that the Assembly makes complementarity an agenda item to be discussed at future sessions.]

## Annex I

### Draft resolution language for the omnibus resolution

*[Suggested draft text, for omnibus to be included under one sub-heading].*

*Reaffirming* its commitment to the Rome Statute of the International Criminal Court and its determination that the most serious crimes of concern to the international community as a whole must not go unpunished, and *underlining* the importance of the willingness and ability of States to genuinely investigate and prosecute such crimes,

*Welcoming* the efforts and achievements of the Court in bringing those most responsible for the crimes under the Rome Statute to justice and *noting* the jurisprudence of the Court on the issue of complementarity,

*Recalling* that the application of articles 17 and 19 of the Rome Statute concerning the admissibility of cases before the Court is a judicial matter to be determined by the judges of the Court,

*Recalling further* that greater consideration should be given to how the Court will complete its activities in a situation country and that possible completion strategies could provide guidance on how a situation country can be assisted in carrying on national proceedings when the Court completes its activities in a given situation,

1. *Recalls* the primary responsibility of States to investigate and prosecute the most serious crimes of international concern and that, to this end, appropriate measures need to be adopted at the national level, and international cooperation and judicial assistance need to be strengthened, in order to ensure that national legal systems are willing and able genuinely to carry out investigations and prosecutions of such crimes;

2. *Resolves* to continue and strengthen, within the appropriate fora, effective domestic implementation of the Rome Statute, to enhance the capacity of national jurisdictions to prosecute the perpetrators of the most serious crimes of international concern in accordance with internationally recognized fair trial standards, pursuant to the principle of complementarity;

3. *Welcomes* the international community's engagement in strengthening the capacity of domestic jurisdictions and inter-State cooperation to enable States to genuinely prosecute Rome Statute crimes;

4. *Also welcomes* efforts by the United Nations, international and regional organizations, States and civil society in mainstreaming capacity-building activities aimed at strengthening national jurisdictions with regard to investigating and prosecuting Rome Statute crimes into existing and new technical assistance programmes and instruments, *strongly encourages* additional efforts in this regard by other international and regional organizations, States and civil society;

5. *Welcomes*, in this regard, the adoption of the 2030 Agenda for Sustainable Development and acknowledges the important work being undertaken with regard to promoting the rule of law at the national and international levels and ensuring equal access to justice for all;

6. *Stresses* that the proper functioning of the principle of complementarity entails that States incorporate the crimes set out in articles 6, 7 and 8 of the Rome Statute as punishable offences under their national laws, to establish jurisdiction for these crimes and to ensure effective enforcement of those laws, and *urges* States to do so;

7. *Welcomes* the report of the Bureau on complementarity, and *requests* the Bureau to remain seized of this issue and to continue the dialogue with the Court and other stakeholders on complementarity, including on complementarity-related capacity-building activities by the international community to assist national jurisdictions, on possible situation-specific completion strategies of the Court and the role of partnerships with national authorities and other actors in this regard; and also including to assist on issues such as witness and victims protection and sexual and gender-based crimes;

8. *Welcomes* the report by the Secretariat of the Assembly of States Parties on the progress in giving effect to its mandate to facilitate the exchange of information between the Court, States Parties and other stakeholders, including international organizations and civil society, aimed at strengthening domestic jurisdictions; *welcomes further* the work that has already been undertaken by the Secretariat and the President of the Assembly, and *requests* the Secretariat to, within existing resources, continue to develop its efforts in facilitating the exchange of information between the Court, States Parties and other stakeholders, including international organizations and civil society, aimed at strengthening domestic jurisdictions, and to report to the fifteenth session of the Assembly on further progress in this regard;

9. [*Welcomes* the focused dialogue on [...] held in the plenary discussion on complementarity during the fourteenth session of the Assembly with a special focus on sexual and gender-based crimes.];

10. *Encourages* the Court to continue its efforts in the field of complementarity, including through exchange of information between the Court and other relevant actors, while recalling the Court's limited role in strengthening national jurisdictions and also *encourages* inter-State cooperation in that regard;

## Annex II

### **Summary of the workshop held in Antigua, Guatemala on 24-25 June 2015 – “Strategic Actions against Impunity related to Sexual Crimes and other Gender-Based Violence Offences”**

1. On 24 and 25 June 2015, a workshop on strategic actions against impunity related to sexual crimes and other gender-based violence offences took place in Antigua, Guatemala. The workshop, co-organized by the Embassy of Sweden in Guatemala and the Unión Nacional de Mujeres Guatemaltecas (UNAMG) and sponsored by Sweden was attended by 22 representatives of national organizations and institutions, as well as international experts. The workshop gathered participants from women’s and human rights organizations, judges, prosecutors and police of the Guatemalan justice system, international experts and survivors of serious acts of sexual violence for an unprecedented dialogue and experience sharing.
2. Following the introductory remarks, the workshop consisted of several presentations, in which participants shared their practical experiences and views on achievements and challenges with regard to the investigation and prosecution of sexual and gender-based crimes (SGBC). The presentations focused on national legislation, law enforcement and awareness-raising and were followed by group discussions enabling knowledge sharing for the continuous improvement of current praxis. The discussions concluded in a set of recommendations for further action.
3. The specific investigation and prosecution strategies developed within the Guatemalan police and prosecutor’s office in relation to SGBC were highlighted. It was noted that interagency coordination, gender-training and specialised expertise in the police and among prosecution authorities and judges, including through the establishment of specialised institutions and units are essential to strengthen national capacity to prosecute these crimes. Further, emphasis was placed on the need for international support and the importance of partnerships between relevant stakeholders, including governmental authorities and civil society, in order to enhance accountability for SGBC.
4. Further, to unveil structures of widespread corruption in order to secure access to justice were addressed at length among workshop participants. In this regard, the valuable work of the International Commission against Impunity in Guatemala (CICIG) was acknowledged.
5. Attorney General Ms. Thelma Aldana stressed that the sexual and gender-based violence (SGBV) which women face today in Guatemala, in time of peace, is rooted in the same structures and values of male superiority that were behind the crimes during armed conflict. The need to address crime patterns and the root causes to the crimes, such as gender-based discrimination, was emphasized in order to achieve sustainable change.
6. The thematic discussions took its starting-point from the strong accounts by survivors of grave sexual violence, offences which had taken place during the armed conflict. The psychosocial, political and legal support provided by women’s and human rights organizations, members of the police, lawyers and prosecutors to these survivors, all of them Maya Indian women, were identified as a crucial element in their search and quest for justice, contributing to overcoming feelings of guilt and stigmatization. Emphasis was placed on the courage and perseverance of the survivors and the knowledge-based, dedicated and persistent work of the supportive actors. The importance of co-ordination and cooperation between all involving actors and their mutual respect and understanding was underscored.
7. Further, the importance of raising awareness for SGBV as a crime, and as a violation of human rights was stressed by several participants. It was noted that awareness-raising serves as a preventative measure and contributes to combat the stigma associated with rape and other forms of sexual violence offences. Removing the stigma was identified as imperative for preventing and punishing the often systematic nature and the cruelty of

SGBV. In this regard, the importance of well-functioning institutions and an independent judiciary as a basis for rule of law and as a mean to ensure access to justice was recognised.

8. Furthermore, the discussions emphasized the need to ensure that members of the police, prosecutors and other criminal justice officials receive regular and institutionalized training to sensitize them to sexual and gender-based violence-related issues in order to avoid re-victimisation and to build institutional capacity with regard to investigating and adjudicating these crimes.

9. Finally, attention was drawn to two legal processes in Guatemala dealing exclusively with SGBC. It was observed that these processes have contributed to the development of case-law on modes of liability, including on how to connect high-level accused to sexual violence crimes, which could be of interest to the international community at large and help build jurisprudence on how to legally address and adjudicate these crimes.

10. The workshop highlighted the importance of collaboration, both on a national and international level, including building networks between legal structures and civil society in order to end impunity for SGBC and ensure its non-repetition. The important role of civil society to help address and expose the root causes of sexual and gender based violence was reiterated as well as the need to make greater use of international normative frameworks, such as the Rome Statute.

11. The workshop was an historic event in the sense that it gathered survivors of grave sexual violence as well as members from the national police, the public prosecutor's office and judges for an unprecedented dialogue. The format and setting of the workshop allowed for an inclusive, open and respectful discussion and the courage and strength demonstrated by the participating Maya Indian women was recognized and commended.

## Annex III

### **Summary of the workshop held in Kampala, Uganda on 11 August 2015 - “Combating Sexual and Gender-Based Crimes at National Level”**

1. On 11 August 2015, a workshop on combating sexual and gender-based crime (SGBC) at national level was held in Kampala, Uganda hosted by the Swedish Embassy in Uganda in cooperation with the Directorate of Public Prosecutions of Uganda (DPP) and the International Development Law Organization (IDLO). The workshop was funded by Sweden, with sponsoring from IDLO. High level officials from the Government of Uganda and representatives from the Ugandan justice system were invited, together with national and international experts to share experiences and practices to improve the domestic prosecution of SGBC.
2. In his opening remarks the Swedish Ambassador to Uganda H.E. Urban Andersson noted that the workshop was part of global efforts to strengthen national capacities to investigate and prosecute sexual and gender-based violence (SGBV) at national level in accordance with the Rome Statue, and confirmed the Swedish Government’s commitment in preventing such violence and promoting gender equality and victims’ empowerment. The presence of key stakeholders and the high-level representation from the Ugandan Government were recognized as a sign of the broader interest and the common purpose for the issue at hand and in this connection, the late Ms. Joan Kagezi, former Senior Principal State Attorney was remembered and honored for her strong commitment and efforts, both on an international and local level, to combat SGBC.
3. In preparation for the workshop draft recommendations for further action had been developed in consultations between IDLO, Sweden and Ugandan judges and prosecutors. During the various sessions of the workshop, including presentations, in-depth discussions in working groups and a plenary session, these draft recommendations were discussed with the aim of identifying procedures for their effective implementation. In this regard, it was noted that Uganda had made substantial efforts to eradicate SGBC, such as the adoption of pioneering national laws and soft-law instruments on SGBC, as well as engaged in regional and international cooperation on these issues.
4. The Attorney General, Mr. Fred Ruhindi noted that SGBC was a grave and widespread problem in Uganda, both during armed conflict but also in times of peace. In this regard, the ratification of international norms and standards was highlighted, as well as the experience of domesticating the Rome Statue. However, one of the major challenges was, according to the Attorney General, the lack of full implementation of adopted legislation, inter alia due to traditional and cultural beliefs and pervasive misconceptions.
5. In regard to international commitments, the Uganda National Action Plan on the implementation of UN Security Council Resolutions 1325 & 1820 and the Goma Declaration was highlighted as an important contribution to the national institutional legal framework, and referred to as a good starting point to prevent and respond to SGBV. Emphasis was however placed on the need for adequate review and follow-up of the priorities and strategies stipulated, and of measures taken on the basis of the Action Plan. The need to further involve the security sectors was also stressed in this regard as efforts to eradicate SGBV in armed conflict could themselves be an important tool to enhance and increase cooperation and promote peaceful resolutions of conflicts in the wider Great Lakes region.<sup>1</sup>
6. In terms of the legal framework, the existence of significant legal barriers to effective and efficient enforcement of SGBV-related law, in particular procedural and

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<sup>1</sup> The three-day training on “Addressing Sexual Violence in Conflict within the Military Justice System” co-organized by the International Conference on the Great Lakes Region (ICGLR) Regional Training Facility (RTF) on the Prevention and Suppression of Sexual Violence in the Great Lakes Region and the United Nations Team of Experts on the Rule of Law and Sexual Violence in Conflict (hosted on 10-12 August 2015) in Kampala was mentioned as an initiative in this regard.

evidentiary barriers to effective prosecution were discussed at length among workshop participants. In the context of Uganda, the legal definition of rape used in the national penal code was considered inadequate by some of the participants. Evidentiary requirements, such as the corroboration requirement, were also mentioned as a challenge in this regard. The need to strengthen institutional capacity was recognized, and also to consider legal reforms, where appropriate.

7. Further, emphasis was placed on the need to ensure the safety, privacy and dignity of victims and witnesses of SGBC at all stages of the criminal justice process. It was noted that victims and witnesses of SGBC are exposed to a wide range of threats and other obstacles which impede the right to remedy and access to justice, as well as entail substantial risks to psychological and physical well-being. Cognizant of the fact that many domestic legal frameworks lack adequate legal response in the area of victim and witness protection, the importance of strengthening protection capacities at national level was recognized. To create, and enhance where already existing, policies and procedures to ensure that victims and witnesses are empowered to report SGBC and participate in criminal investigations and court proceedings were acknowledged.

8. In the Ugandan context the importance of specialised courts and institutions as a means to address and reduce the vast backlog of cases in a systematic manner, including by developing gender sensitive case hypotheses, coherent and consistent legal strategies and gender awareness in analysing crime patterns was addressed. Exchange of experiences between countries in this regard was encouraged, where appropriate. In this connection, the problem of high-withdrawal rates and under-reporting due to stigmatization and other obstacles that impede access to justice for survivors of grave sexual violence, such as fees on legal claims and for medical examinations was also discussed at length. It was observed that financial charges, in particular, constitute an obstacle for rural poor women's access to justice.

9. In regard to access to justice and legal services a discussion was held about the benefits of and challenges to creating uniformity with respect to the investigation and adjudication of SGBC. With respect to Uganda, concern was raised of perceived inconsistencies in this regard and greater uniformity was called for. One concrete organizational measure introduced to address this issue was the introduction of specially trained personnel at all local police stations to improve the delivery of services to victims of SGBV and the assurance of their rights. Further, the DPP announced the issuing of a Prosecutor's handbook on the prosecution of SGBC, aimed to help advance approaches to address these crimes in a coherent and consistent manner.

10. The importance of ensuring adequate and regular sexual and gender-sensitivity training to police, criminal justice officials and professionals involved in the criminal justice system was reiterated by several participants. It was noted that the nature of the crime requires specific law enforcement skills, legal expertise and a deeper understanding of the unique needs of victims of SGBV in order to ensure the effective investigation, prosecution and trial of these crimes, as well as to prevent re-victimization. It was argued that without the necessary means and knowledge SGBC-cases will continue to be plagued by prosecutorial omissions and errors or, at worst, remain unaddressed.

11. In addition, with the understanding that SGBC exist in every country in the world as a pervasive violation and that these are crimes, to which both women and girls, men and boys, may become victims at a tremendously high cost for individuals and for societies at large; the need to address and expose the root causes of SGBV were acknowledged. Building networks between legal structures and civil society were identified as critical element in this regard. It was recognised that by understanding and exposing the root causes, civil society can help prevent further abuse and violations.

12. Further, the participants discussed the importance of raising awareness and the critical role of education in combating SGBV. To raise awareness and increase public understanding and knowledge of the social and cultural context that facilitate, allow and legitimize this violence was recognized as imperative to break "the wall of silence" and help tackle the stigma associated with SGBC. It was noted that Uganda had been taking important steps in this regard by endeavoring to change attitudes and transform cultural and social beliefs regarding SGBV, for example by engaging in the "Global Campaign 16 days

**Activism Against Gender Based Violence**” and launching a national zero tolerance campaign on SGBV to speak out for increased attention and condemn this violence

13. In conclusion, the workshop produced interesting and focused discussions among key stakeholders and raised important considerations on reform in order to enhance national capacity to address SGBC. Although Uganda had adequate legal framework in place the need to improve resource allocation and to address root causes of SGBV was highlighted. The importance of a collective and coordinated response in this regard in order to ensure sustainable opportunities and achieve long-term results was reiterated by several participants. The important role of partnerships, in particular with civil society, was underlined.

14. The draft recommendations, tailored to the specific situation in Uganda in addressing SGBC, were discussed and, together with the recommendations from Guatemala, will form the basis for the discussions during the special segment on complementarity during the Fourteenth session of the Assembly of States Parties.

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