

## Annex

### Concept note by the *ad country* co-focal points for complementarity, Botswana and Sweden

Fourteenth session of the Assembly of States Parties to the Rome Statute

#### Thematic discussion

The Bureau of the Assembly of States Parties has decided that the fourteenth session of the Assembly of States Parties will have a special segment to **exchange views on strategic action to enhance national capacity to investigate and prosecute sexual and gender-based crimes that may amount to Rome Statute crimes.**

#### Rationale

The Rome Statute of the International Criminal Court (ICC) addresses sexual and gender-based crimes as distinct categories of crimes. The Office of the Prosecutor (OTP) published its Policy Paper on such crimes in June 2014.

In line with the principle of complementarity, it is the primary responsibility of national jurisdictions to prosecute the most serious crimes of international concern. However, atrocity crimes are often especially complex crimes and entail specific challenges in terms of investigation and prosecution. Furthermore, societies recently affected by conflict may find this even more challenging since judicial institutions may have been adversely affected by the conflict. In addition to these challenges, investigating and prosecuting sexual and gender-based crimes present their own specific challenges connected to stigma, societal, cultural or religious factors.

Therefore, appropriate measures need to be adopted at the national level, and international cooperation and judicial assistance may need to be strengthened in order to combat impunity for these crimes.

The purpose of selecting this topic for the plenary session 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. Inspiration could be drawn from the set of Recommendations on the national implementation of the principle of complementarity on sexual and gender-based Rome Statute crimes, prepared by the International Development Law Organization (IDLO), which will be made available in the plenary.

#### Ensuring access to justice for victims of sexual and gender-based crimes

Enhancing empowerment of victims contributes to ensuring access to justice. Drawing from the national experiences of States Parties, as well as the Court and other international actors, the special segment would invite participants to explore concrete strategic action at the national level to address sexual and gender-based crimes as atrocity crimes. More specifically, strategies on how to overcome gaps in the legal framework, including on the definition of rape in national law, could be shared. Participants are furthermore invited to address the issue of coordination strategies in order to focus resources to overcome barriers to justice, e.g. fees for lodging complaints and for medical and/or

forensic examination; and devise ways to make the justice system more gender responsive, e.g. through training of practitioners.

### **Enhancing empowerment of victims of sexual and gender-based crimes**

Sexual and gender-based violence has often not attracted appropriate attention of law enforcement and justice mechanisms as atrocity crimes. A particular problem is the non-reporting and under-reporting because of the stigma that is attached to the victims. The importance of addressing root causes of this stigma and to gain better understanding of societal, cultural or religious contexts have been underlined by a range of concerned actors, as well as to counter prevailing narratives of “masculinity” as one of the root causes to the violence. This has been pointed out as crucial in order to ensure that victims’ voices are heard and listened to and to enable victims to gain access to justice mechanisms. The issue of assisting victims to gain “legal literacy” to be able to translate their experiences before justice mechanisms could be highlighted as an example.

Ensuring protection of and support to victims is a necessary starting point. Examples of efforts to build partnerships and to strengthen cooperation between relevant actors on the national, regional and international levels, including civil society organizations and victims’ organizations, could be highlighted and explored as a means to further enhance the empowerment of victims.

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