

Summary of the panel discussion held at the fourteenth session of the Assembly of States Parties, on 19 November 2015 - “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”.

1. The Assembly’s *ad country* focal points for complementarity, Botswana and Sweden, as part of their efforts to explore and demonstrate how complementarity can be used to help bridge the impunity gap for sexual and gender-based crimes that may amount to Rome Statute crimes, organized a panel discussion on this topic in the Assembly plenary on 19 November 2015.

2. The plenary was divided into two panels, which focused, respectively, on the following topics: “Ensuring access to justice for victims of sexual and gender-based crimes at the national level” and “Enhancing empowerment of victims of sexual and gender-based crimes at the national level”.

3. Seven distinguished panellists shared their insights on the topics under discussion.¹ The interventions from the panel were followed by statements from State Parties and NGOs. Participants thanked Sweden and Botswana for their leadership in advancing the complementarity agenda in general and for organizing this panel in particular, and agreed on the importance of sharing experiences and practice on combating sexual and gender-based violence. The President of the Assembly of States Parties, H.E. Mr. Sidiki Kaba (Senegal), opened the plenary, stressing the importance of discussing complementarity in the framework of the Assembly in view of the primary responsibility of the State to investigate and prosecute atrocity crimes.

4. As inspiration for the discussion, participants had before them the “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”, the result of two workshops organized with the support of Botswana and Sweden in Guatemala and Uganda in 2015. Ms. Irene Khan, Secretary-General of the International Development Law Organisation, who moderated the panel, indicated that the recommendations stressed the need for ‘smart’ complementarity, that is tailor-made complementarity to be suitable for the specific context in each country, as well as the importance of creating an enabling environment to combat impunity by strengthening the political commitment to accountability and allocating sufficient human and financial resources.

5. H.E. Ms. Alice Bah Kuhnke, Minister for Culture and Democracy of Sweden, stressed that combating sexual and gender-based violence means taking a firm stance against inequality, empowering women and girls economically, politically and socially and engaging men and boys in the fight against sexual and gender-based violence.

¹ H.E. Mr. Sidiki Kaba, Minister of Justice of Senegal and President of the Assembly of States Parties; H.E. Ms. Alice Bah Kuhnke, Minister for Culture and Democracy of Sweden; Dr. Athaliah L. Molokomme, Attorney General of Botswana; Ms. Thelma Aldana, Attorney General of Guatemala; Mr. Mike Chibita, Director of Public Prosecutions (DPP) in Uganda; Ms. Fatou Bensouda, ICC Prosecutor; Ms. Irene Khan, Secretary General of the International Development Law Organisation (IDLO); Ms. Brigid Inder, Executive Director of Women’s Initiatives for Gender Justice.

6. Dr. Athaliah L. Molokomme, Attorney General of Botswana, Ms. Thelma Aldana, Attorney General of Guatemala, and Mr. Mike Chibita, Director of Public Prosecutions of Uganda, informed the meeting about the challenges encountered in their respective countries when investigating and prosecuting sexual and gender-based crimes, but also about the progress made in the last two decades. They highlighted that until recently, sexual and gender-based crimes had been regarded as a private matter and as soft crimes, which had contributed to the difficulties in combating these crimes. Civil society organizations also highlighted that at national levels, sexual and gender-based crimes are often forgotten crimes but that progress was being made thanks to the ICC's investigations and also to pressure from civil society.

7. Ms. Fatou Bensouda, ICC Prosecutor, informed the meeting about progress on the implementation of the OTP's Policy Paper on Sexual and Gender-Based Crimes, issued in June 2014, integrating a gender perspective and gender analysis into all areas of its work. She pointed out that the policy paper could serve as a reference document for national jurisdictions and stated that her office was encouraging domestic investigations and prosecutions of sexual and gender-based crimes that amounted to Rome Statute crimes.

8. Panellists emphasized that sexual and gender-based violence was a structural problem that continued to plague every region and every country around the globe, and that while horrendous sexual and gender-based crimes were being committed in conflict, the pattern underlying sexual and gender-based violence was the same in times of peace as in times of war. However, participants expressed their conviction that sexual and gender-based crimes that amount to Rome Statute crimes can be prevented, stopped and prosecuted. To do so, participants agreed that the political will to address the root causes of sexual and gender-based violence, such as prevailing narratives of male superiority, was indispensable. It was further noted that the social stigma attached to the victims of sexual and gender-based violence contributed to the particular problem of non-reporting and under-reporting of such crimes. The important role of civil society organizations in challenging a culture of silence and shame was highlighted in this regard. Mr. Mike Chibita noted that as Uganda did not have a witness protection law, victims often also refused to testify out of fear of retaliation.

9. Panellists and States agreed that an enabling environment had to be created in order not to disempower those who had suffered but to empower the victims to become agents of change. It was pointed out that ensuring access to justice and the empowerment of victims were mutually reinforcing principles. Speakers agreed that the victims' needs should be the guiding principle seeking to strengthen national capacity to combat sexual and gender-based violence. Ms. Thelma Aldana noted that sexual and gender-based crimes amounting to Rome Statute crimes had long been ignored in Guatemala, but that the victims were committed to breaking the silence. In a historic turning point, victims had recently given testimony in a national court in Guatemala for the first time, demanding reparations and justice to prevent the commission of such crimes in the future. Civil society organizations stressed the importance of reparative justice and mentioned the challenges of assisting victims in gaining access to justice. Many States expressed their appreciation for the assistance which the Trust Fund for Victims was providing to victims of sexual and gender-based crimes.

10. States reaffirmed that it was the primary responsibility of national jurisdictions to prosecute Rome Statute crimes. Therefore, and as international crimes were often specifically complex and challenging in terms of investigation and prosecution, States stressed the importance of exchanging experience and assisting each other and of benefitting from national, regional and international expertise in the investigation and prosecution of sexual and gender-based crimes. The policy paper of the Office of the Prosecutor was highlighted as particularly useful in this regard. In general, it was pointed out that building partnerships and strengthening cooperation between relevant actors on the national, regional and international levels, including civil society organizations and victims' organizations, can help ensure access to justice for victims, and that supporting civil society organizations was important in this regard. Ms. Brigid Inder, Executive Director of Women's Initiatives for Gender Justice, shared her organization's experience that partnering with grassroots organizations and investing in local communities was the only way to successfully deliver meaningful justice to victims.

11. States Parties further informed the meeting about progress made in the strengthening of their national judicial systems, recent developments in the area of prosecution of sexual and gender-based crimes, reflecting on capacity needs and providing information on technical assistance to other States to investigate and prosecute sexual and gender-based crimes that may amount to Rome Statute crimes. States and panellists also pointed to the real capacity needs in areas such as medical and psychological victim support and counselling. The crucial work done by the United Nations Team of Experts on the Rule of Law and Sexual Violence in Conflict and by Justice Rapid Response, especially with regards to the establishment of a sexual and gender-based violence experts roster in partnership with UN Women, was commended in this regard. The multilateral treaty for mutual legal assistance and extradition for domestic prosecution of atrocity crimes, a joint initiative of Argentina, Belgium, the Netherlands and Slovenia, was also mentioned in this connection. However, States also stressed that assistance to strengthen national judicial capacity must be based on the principle of national ownership and should be aligned with State priorities.

12. The importance of national legislation incorporating the Rome Statute crimes was also highlighted, as the Rome Statute system can only succeed in fighting impunity if it is underpinned by strong national criminal justice systems. States also pointed out the vital role of the Court in bringing perpetrators to account where States were unable or unwilling to do so, and commended the Prosecutor for mainstreaming sexual and gender-based crimes into all aspects of her office's work.

13. States expressed their satisfaction with the increasing focus on sexual and gender-based violence and with the important steps taken in the last decades to combat such violence, legally with the adoption of the Rome Statute and with regards to the case law of the International Criminal Tribunals, and politically in light of the various Security Council resolutions on sexual and gender-based violence in conflict. However, while the policy and legal framework was in place, accountability for sexual and gender-based crimes that may amount to Rome Statute crimes remained, unfortunately, low.