
COMPLEMENTARITY FOR SEXUAL AND GENDER-BASED ATROCITY CRIMES

Shared experiences on strategic action to ensure access to justice and to enhance empowerment of victims at national level: conclusions and recommendations



FOCUS ON COMPLEMENTARITY TO HELP BRIDGE THE IMPUNITY GAP

In line with the principle of complementarity in the Rome Statute, it is the primary responsibility of national jurisdictions to prosecute the most serious crimes of international concern. However, investigating and prosecuting such crimes pose particular challenges as these crimes are often more complex and require capacity and knowledge of international criminal law.

Building on the important legacy of the international criminal tribunals, the International Criminal Court (ICC) has developed its own capacity and knowledge on the investigation and prosecution of sexual and gender-based Rome Statute crimes, clearly manifested through the ICC Office of the Prosecutor (OTP) Policy Paper launched last year. States have also strengthened efforts to address these crimes, have shared experiences among themselves and have benefited from international and regional efforts. The ICC and national systems can often be mutually reinforcing, and strategic action at national level is indeed crucial for the viability of the Rome Statute system.

A TWO-TRACK APPROACH

The Governments of Sweden and Botswana have in their capacities as co-focal points for complementarity at the ICC Assembly of States Parties (ASP) taken measures to explore and demonstrate how complementarity can be used to help bridge the impunity gap for sexual and gender-based crimes as Rome Statute crimes.

Within the framework of complementarity under the Rome Statute and the OTP Policy on Sexual and Gender Based-Crimes (SGBC), Sweden and Botswana have applied a two-track approach in their work:

- a) strengthening the capacity of national jurisdictions to effectively investigate and prosecute sexual and gender-based crimes as Rome Statute crimes, and
- b) sharing experiences and practices at international/regional and national levels, including through the ICC Assembly of States Parties.

These tracks are interdependent and mutually reinforcing and may be supported through international and regional actors, including international development actors.

During recent years a number of successful summits and meetings have been arranged with the aim of identifying strategic approaches within these two tracks. Most recently in 2015, two workshops have been held to focus on experiences in Guatemala and Uganda.

STRATEGIC ACTION AT NATIONAL LEVEL: THE GUATEMALA AND UGANDA WORKSHOPS

During the workshops in Guatemala and Uganda in June and August 2015, respectively, key national stakeholders representing State and non-State justice actors, as well as representatives of the ICC, United Nations and regional organisations, exchanged expertise, practices and lessons learned on sexual and gender-based crimes. The workshops highlighted a number of aspects of complementarity, including how legal action at national level can build on and domesticate the ICC OTP policy. They also provided an opportunity for strengthening partnerships and coordination of activities and measures between state authorities and governments, international actors and civil society, including women's rights groups.

Participants at the [Guatemala workshop](#) emphasized the need to address the root causes of the crimes, including discrimination, and to encourage integrated processes to build gender equality. The workshop demonstrated how coordination of

measures between different actors could help empower victims and their organisations to secure effective access to justice in line with international standards, including UN Security Council Resolution 1325 and subsequent Council resolutions. The important role that committed networks and alliances play in providing psychosocial, political and legal support to the victims – as well as being a crucial element in the search for justice in the context of strategic litigation – was also discussed during the workshop.

National court cases on sexual and gender-based violence may in this regard be of special interest and may assist other States on how to legally address these crimes before domestic courts. The need to raise awareness among the public in general and victims in particular was also identified as vital in order to position sexual violence as a serious crime and an abuse or violation of human rights. The contribution of the International Commission against Impunity in Guatemala (CICIG) was also highlighted as a mechanism for strengthening the capacity of the judicial system.

Participants at the [Ugandan workshop](#) shared their experiences in domesticating the Rome Statute and balancing amnesty with the obligation to prosecute perpetrators of conflict-based sexual and gender-based violence that may amount to Rome Statute crimes. They also addressed the underlying pattern of discrimination and stigma for victims of sexual and gender-based violence in peacetime as well as during armed conflict. The need for enhanced efforts to handle substantive backlogs of court cases and coordinate measures to overcome obstacles to effectively access justice was also identified as key. It was stressed that socio-economic factors, such as a lack of resources to cover the cost of fees when filing cases, can be an obstacle for victims trying to access justice.

Several actors stressed that the lack of implementation of national, regional and international legislation and commitments

remained the overarching challenge. The role of the Ugandan Justice, Law and Order Sector (JLOS) was highlighted as a national coordinating mechanism for enhancing access to justice for victims.

A key lesson learned from both workshops is the usefulness of building networks within and between domestic legal structures, international/regional actors and civil society. It was acknowledged that particularly women's rights-based organisations and human rights groups with extensive legal competence can play a key role in addressing root causes of sexual and gender-based violence and increasing the resilience of societies to prevent such violence. They also had a role to play in raising the awareness among victims as rights holders and redressing violations through effective remedies as well as assisting in bringing cases to court and using advocacy to influence decision-makers.

RECOMMENDATIONS ON STRATEGIC ACTION THROUGH COMPLEMENTARITY TO COMBAT SEXUAL AND GENDER-BASED CRIMES

Identifying challenges and opportunities. Explore and map out challenges and opportunities in response to sexual and gender-based crimes in national, regional and international jurisdictions.

Benefit from expertise. Make use of international, regional and national expertise in the investigation and prosecution of sexual and gender-based crimes as serious international crimes, including resources on best practices, such as the ICC OTP Policy Paper.

Strong political commitment. Strengthen political commitment to promote justice for victims.

Allocate resources. At state level, allocate sufficient human and financial resources to combat impunity for sexual and gender-based crimes as serious international crimes.

Coherent action. Formulate national action plans to prioritise the investigation and prosecution of sexual and gender-based crimes in line with national legal frameworks, international best practices and with due consideration for informal justice mechanisms in line with international human rights law.

Address root causes. Analyse and address the patterns and root causes of sexual and gender-based violence, including gender-based discrimination and stigma, as obstacles to investigating crimes and bringing perpetrators to justice and achieving redress for victims.

Provide international support. Provide international (legal, political, economic) support to national justice mechanisms, coordinating support to adapt to the specific needs of the country in question ('smart' complementarity). Support victims and civil society organisations working to address root causes of violence (stigma and gender discrimination).

Facilitate access to justice. Identify and address possible gaps in legislation. Ensure effective access to justice for all victims, *inter alia* by simplifying procedures to file complaints, developing functional legal aid systems and ensuring victims' access to qualified interpreters, as may be required in multilingual societies. Aim to provide filing procedures free of charge for sexual and gender-based violence.

Protect victims. Develop security, legal, forensic, medical, psychosocial and financial measures to protect and support victims during all phases of criminal justice proceedings, including measures to address victims' stigma and prevent double victimisation.

Provide reparations. Develop reparation mechanisms for victims in line with international human rights obligations, including UN standards, and promote victims' access to socio-economic rights, including health, housing and education.

Address backlog of court cases. Develop independent, well-functioning, adequately funded and gender-sensitive justice systems at national level. Craft strategies to address the backlog of court cases on sexual and gender-based violence.

Enhance gender balance. Improve gender balance in the recruitment, deployment and professional development of criminal justice actors.

Training for criminal justice actors. Provide training in the investigation and prosecution of sexual and gender-based violence as serious international crimes, in compliance with international fair trial standards.

Promote partnerships. Promote the creation of partnerships and community networks involving victims, women's rights associations, media, academia and other non-State actors, and maximise their impact in addressing impunity through legal empowerment, sensitisation, awareness-raising campaigns and educational programmes.

CONCLUSION AND WAY FORWARD

In the context of complementarity, the Guatemala and Uganda workshops confirmed the need for and provided several examples of 'smart' complementarity, tailor-made to be suitable for the specific context in each country when strengthening policies and legal and judicial systems at national level.

The two workshops also testified to the importance of exchanging experiences and practices both at national and global level, to

improve the prosecution of complex international crimes, including SGBC. By sharing national experiences, such as through the Guatemala and Uganda workshops, key national actors can be better positioned to make a real change, help bridge the impunity gap and increase access to justice for victims.

All relevant actors are encouraged to continue and to intensify efforts and coordination to address atrocious sexual and gender-based violence at local, national, regional and international levels, identifying connections and synergies between different levels and actors in order to benefit from best

practices and standards. States and international actors are encouraged to continue to share experiences and practices on empowerment and access to justice for victims, addressing root causes such as discrimination and stigma.

Problems connected to stigma and shame prevent victims and witnesses from coming forward and authorities from responding adequately. It is therefore suggested that this issue be further explored as one of the main obstacles to ensuring access to justice for victims.

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