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*Seeking Reparation for Torture Survivors*

**SGBV in DRC & CAR:  
the ICC's charging practices**

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# Nature of SGBV in DRC and CAR

- popular images v. multi-faceted extent of criminal acts & intentions
- 'rampaging soldiers'; context of looting and pillaging; soldiers that are out of control; 'toxic testosterone'; 'lust gone wrong'

# Multi-faceted, unspeakable atrocities

- Sexual violence as instrument of terror:
  - public rapes, gang rapes, forced incest, sexual mutilation, disembowelling (often of pregnant women), acts of cannibalism, deliberate spreading of HIV
  - ICTs found that public acts of rape, rape before family members, collective rapes can amount to torture, cruel, inhuman and degrading treatment
- Bodies as objects of torture:
  - acts of extreme cruelty, insertion of objects, gun barrels, sticks, bottles, batons covered in chilli pepper
  - 12.4% of 492 victims interviewed by 2 women's groups in North Kivu suffered this type of violence.

- Sexual violence as booty:
  - Rape being 'offered' to troops after battle along with looting (eg. UPC, testimony in Lubanga Trial)
  - subjugation of defeated population after victory.
- Sexual slavery:
  - Mass abductions, women as spoils of war, often girls
  - Mistreatment, ill-fed, humiliation, repeated rape/abuse, horrific conditions
  - Child soldiers, forced marriage: "sexual acts against children were particularly appalling"
- Ethnically motivated Sexual violence
- Against very young girls, boys, men, women, elderly, pregnant...

Example of unspeakable horror:

“... My daughter refused to obey the order to undress. They then told her to chose between rape or death. She chose death. So, they started to torture her by cutting off her breasts with a knife and then her ears then they opened up her stomach completely... After a while my daughter gave her soul... I was powerless, I was not able to protect her. After that I cant do anything I am ill, traumatised to the extreme.”

Source: Rights & Democracy Manual: mettre fin a l'indifference: Les violences sexuelles dans les conflits arames de 1993 a 2003 en Republique democratique du Congo (unofficial translation)

# ICC cases

- Premise of admissibility of cases in DRC /CAR: State is “unable or unwilling” to investigate
- International Community response
- Victims may to seek remedy and reparation through Court’s mechanisms: ability to participate / claim reparations
- Charging practice has direct impact on victims’ right to access justice
- To what extent do cases reflect victimisation?

# ICC cases in Ituri, DRC

- **Thomas Lubanga**, head of UPC (warrant issued in 2006): enlisting, conscripting and actively using children under the age of 15 in hostilities.
- **No sexual violence charges**
- But according to witness testimony in case:  
After the battles for Lipri and Barrière in 2003, the UPC's commanding officers reportedly authorised troops to loot and rape women and girls in civilian population.
- Jean Bosco Ntaganda: *idem* (at large)

# ICC cases in Ituri, DRC

- **Germain Katanga** (Lendu, FNI) & **Mathieu Ngjudjolo** (Ngiti, FRPI): charged in 2007 for range of counts, including rape and sexual slavery both as crime against humanity and war crimes
- Limited to acts in context of attack on Bogoro Village in Ituri on or around 23<sup>rd</sup> Feb 2003
- Abducted women reported being thrown into water-filled holes from which they were regularly removed to be raped by soldiers /officers. Women raped by other prisoners.

## 2 Ituri cases: implications for reparation?

- Lack of gender element in Lubanga case: in spite of many girls recruited
- Victims = children recruited by UPC
- Hema (UPC) children who joined “voluntarily”\* AND other children who were forcibly recruited
- Failed attempts to include “victimes d’attaques” (ie victims of rapes, killings, pillaging by UPC)

# Ituri cases: implications for reparation?

- Second case (Katanga/Ngudjolo): single attack on single village
- “Victims” in the case = Hema civilians
- Victims of sexual violence as well as other crimes against civilian population (killings etc).
- Hema community to potentially benefit from both cases
- Lendu & other groups targeted by UPC receive nothing (other than child soldier victims)

# Sexual Violence in CAR

- In public spaces, before family members, family members in turn: beyond rape: to terrorise, subjugate, humiliate population
- Testimony in Bemba case does not portray the horror?
- Witness 68: the soldiers who raped her also grabbed her bag which contained clothes and food.
- Witness 82: “My father wanted to intervene, and they put their weapons against him. Other people came and it was [at] that time that they seized me and raped me”

# Charges against Bemba

- Jean Pierre Bemba (2008): systematic rape committed by his troops
- Prosecutor sought to charge with rape, torture and other crimes
- PTC did not confirm torture charges
- PTC held : *main element of crimes against humanity torture was "severe pain and suffering and control of the perpetrator over the person", and these elements were "also the inherent special material elements of the acts of rape"*

# Bemba confirmation of charges decision

- ICTY: cumulative charging *"serve[s] to describe the full culpability of a particular accused or provide a complete picture of his criminal conduct"*. (*Kunerac Appeal Judgment*)
- Definition of torture requires specific intent
- Torture = the infliction of severe pain or suffering, either physical or mental in order to obtain information or based on discrimination...

# Bemba confirmation of charges decision

- PTC in Bemba held that as rape contained the additional element of penetration, it was the most appropriate charge: torture was subsumed into it.
- Similarly, the war crime of “outrages upon personal dignity” was subsumed into the war crime of rape as it was the *‘most appropriate legal characterisation of the conduct presented’*.
- *Actus reus and mens rea elements of torture are different from rape.*

# Bemba confirmation of charges decision

- PTC Justification: *"as a matter of fairness and expeditiousness of the proceedings, only distinct crimes may justify a cumulative charging approach and, ultimately, be confirmed as charges. This is only possible if each statutory provision allegedly breached in relation to one and the same conduct requires at least one additional material element not contained in the other."* *Decision Confirming Charges, 15 June 2009, para 202*

# Need for cumulative charging?

- Sexual violence may also constitute torture, where intention was to cause severe pain or suffering, intention was to subjugate, discriminate, obtain some result (information).
- Amnesty Report on Definition of Rape (2011) also recommends need for cumulative charging of rape in combination with torture or other crimes to reflect full extent of malice, horror
- War time SGBV= beyond 'lust gone wrong'

# FDLR Case in Kivus

- Case of Callixte (2010): Exec Secretary of FDLR
- 3rd generation?
- Charges cover large scale attacks: murder, torture, rape, inhuman acts, persecution.
- “Common plan to create a catastrophe”
  
- Or will complementary charges be dropped at confirmation of charges?
- Hearings commence 4 July 2011.