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Update on judicial proceedings: a focus on charging and prosecuting sexual and gender crimes

Speech

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Ladies and Gentlemen,

I would also like to start by welcoming you today.

As Deputy Prosecutor in charge of the Prosecutions division, I will now provide you with a brief update on our current judicial proceedings, mainly focusing on the charging and the prosecution of sexual and gender crimes.

Background

As you may know, it is part of the Prosecutorial strategy defined by this Office, based on the Statute, to pay particular attention to the investigation and the prosecution of crimes committed against children, sexual and gender-based crimes.

Gender crimes have always been perpetrated during war, not only as a by-product of conflicts but also a weapon of war. International criminal jurisprudence on the subject has only recently recognized this and has evolved tremendously and positively over the last years.

Since the establishment of the *ad hoc* tribunals, several have included charges of sexual violence. Indeed, certain decisions directly involve many crimes that are committed exclusively or disproportionately against women and girls. Perhaps the most groundbreaking decision advancing gender jurisprudence worldwide is the *Akayesu* judgment delivered by the Trial Chamber of the International Criminal Tribunal for Rwanda on 2 September 1998. For the first time in history, rape was explicitly recognized as an instrument of genocide. As described by the ICTR in the *Akayesu* case, rape is used to “kill the will, the spirit, and life itself”. It is also worth mentioning that the Special Court for Sierra Leone Prosecution included the unique charges of “forced marriage” in its indictments, thus contributing to the greater recognition of sexual and gender crimes. In the case against Brima, Kamara, and Kanu, although the SCSL Appeals Chamber declined to enter a separate conviction for the crime of forced marriage, the Chamber distinguished the crime of forced marriage from sexual slavery, describing the crime as more appropriately falling within the scope of “other inhumane acts” under crimes against humanity, drawing its legal reasoning in large part on the Elements of Crimes for “other inhumane acts” under the ICC law. This may therefore impact also the future jurisprudence of the ICC.

Recent developments in our situations related to gender and sexual crimes

Regarding **Northern Uganda**, the Office of the Prosecutor’s investigations have shown that within the LRA structure, commanders received abducted girls as sex

slaves. Joseph Kony himself has had as many as 50 abducted girls in his household at one time – girls who were enslaved and raped. Kony is charged with 3 counts of gender-related crimes.

The investigation showed not only how the LRA abducted girls for sexual enslavement and rape, but also how Kony controlled all aspects of how girls are abducted, distributed to LRA commanders and enslaved. Our investigation showed that Kony preferred abductions of young girls because he believed they were less likely to be infected with sexually transmitted diseases. Kony also ordered his commanders that no girls should be raped before he had ordered their distribution. The LRA even corrupted language to cover their criminal acts by calling the girls “wives” or “sisters”, although they had been enslaved.

Today, as the Prosecutor mentioned, such crimes are continuing. Amid the civilians that were abducted from CAR, Sudan and DRC pursuant to orders by Joseph Kony to abduct 1,000 new “recruits”, many women are used as sexual and domestic slaves.

In the **DRC** situation, Germain Katanga, former leader of the *Force de Résistance Patriotique in Ituri* (FRPI) and Mathieu Ngudjolo Chui, one of the top leaders of the *Front des Nationalistes et Intégrationnistes* (FNI), are charged with ordering the attack upon the village of Bogoro, in the district of Ituri, on 24 February 2003. Both Katanga and Ngudjolo allegedly ordered their fighters to “wipe out” Bogoro. Hundreds of civilians were massacred during the attack, civilians residences were looted and destroyed and women and girls raped.

It was a common practice in the military camps of the FRPI and the FNI to forcefully keep women serving as sex slaves to the fighters. These women typically had been abducted during attacks or from villages or areas surrounding the camps. The women detained in these prisons were repeatedly raped by soldiers and commanders alike. The fate reserved to captured women was widely known.

Some women, who were captured at Bogoro and spared by hiding their ethnicity, were taken to FNI and FRPI camps, after being undressed or raped upon their capture. Once there, they were sometimes given as a “wife” to their captors or kept in the camp's prison.

As the Prosecutor told you, we are now moving on to a third case in the DRC, regarding the Kivus. We have decided to focus on crimes committed by a multiplicity of perpetrators and groups, including numerous reports on horrific sexual crimes.

The ICC Prosecutor's decision to open an investigation regarding the **Central African Republic** situation in May 2007 can be considered as another important step forward concerning the judicial recognition of the significant impacts of sexual crimes and gender violence in the African continent. This was the first time in the international criminal system that an investigation was opened in which allegations of sexual crimes far outnumber alleged killings.

In the case against Jean-Pierre Bemba, we have included the sexual violence and the rapes under the counts of torture and rapes, as crimes against humanity and war crimes, and as well as outrages upon personal dignity, in particular humiliating and degrading treatment, as war crime.

In the **Darfur** situation, on 27 April 2007, the ICC Judges issued arrest warrants against Ahmad Muhammad Harun, former Minister of State for the Interior and current Minister of State for Humanitarian Affairs of the Sudan and Ali Kushayb—a Janjaweed/militia leader—for war crimes and crimes against humanity, including 8 counts related to sexual violence.

In his sixth report and statement to the UN Security Council in December 2007, the Prosecutor shared with the Council his grave concern that massive crimes continue to be committed in Darfur, including against women.

Furthermore, in the Application for an arrest warrant against Sudanese President Al Bashir of 14 July 2008, we submitted that the crimes of rape and sexual violence committed in Darfur are an "integral part" of the process of destruction of the Fur, Massalit and Zaghawa groups, and should thus be charged as genocide under Article 6(b) and 6(c) of the Rome Statute. Rape of women leaving IDP camps for food or firewood is systematic, and benefiting from total impunity. Sexual violence is clearly used as a tool for destroying the communities.

In particular, thousands of women and girls belonging to the target groups were and continue to be raped in all three States of Darfur by members of the Militia/Janjaweed and Armed Forces since 2003. Girls as young as five years old have been raped. A third of the rapes are rapes of children.

Women and girls from the IDP camps going to collect firewood, grass or water are repeatedly raped by Militia/Janjaweed, Armed Forces and other GoS security agents: one victim has told us that the girls go out in groups and when they see the military they run. Some of them escape and some of them are caught are raped, gang-raped, sometimes by over twenty men. These things happen all the time, in full light.

Rape is an integral part of the pattern of destruction inflicted upon the target groups in Darfur. As described by the ICTR in the *Akayesu* case, they use rape to kill the will, the spirit, and life itself.

The harm is physical, it is mental.

Particularly in view of the social stigma associated with rape and other forms of sexual violence among the Fur, Masalit and Zaghawa, these acts cause significant and irreversible harm, to individual women, but also to their communities.

The total denial by Al Bashir of these crimes, stating that rape does not exist in Sudan, that it is not in the Sudanese culture, is yet another affront to these victimized women. But most importantly, crimes continue now.

The challenges we are facing

1. Protection of victims:

One major challenge we are faced with is linked with the insecurity in the countries where the Court operates. The Court operates not only in post-conflict situations but also in areas where conflict is ongoing.

The Court has an obligation under Article 68 of the Statute to take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In particular, the Prosecutor must take such measures during the investigation and prosecution of such crimes.

2. Underreporting of rapes:

Underreporting of rape is an important challenge in all the situations countries. Women are afraid and/or ashamed to come forward, in societies where they are marginalized and with legal systems that do not necessarily recognize their suffering.

In Darfur for example, underreporting is widespread. The numerous bureaucratic red tapes, the suspicion and the sense of helplessness prevent many women and girls from reporting the crimes, while the few who have tried to request justice have mostly been re-traumatized and re-victimized by the level of impunity and the lack of recognition of their suffering.

3. Stigma:

As I mentioned previously while talking about the Darfur situation, sexual and gender crimes stigmatize and marginalize the victims. Women and girls frequently become outcasts in their own communities, lose the respect of their families and friends.

This is something we need to take that into consideration will investigating and prosecuting these crimes: how to 1. support them and ensure they psychological and physical well-being, and 2. not re-traumatize them while, through their testimony, they re-live their past experiences. NGOs can help the OTP with support in this area.

4. Pervasive perception in situation countries that sexual and gender crimes are not as important as killings:

As I have mentioned, it is the Prosecutor's policy to pay particular attention to gender and sexual crimes in our investigations and prosecutions.

In the situation in the Central African Republic for example, allegations of sexual crimes outnumber the allegations of killings. During his visit to the CAR, the Prosecutor has clearly explained to the local communities and the *chefs de quartier* that sexual and gender crimes are weapons of war, and have terrible repercussions for the communities and the areas affected by these crimes.

Conclusion

The Rome Statute provides a strong basis for addressing successfully rape and other forms of gender violence. But the Court can only prosecute a limited number of cases; and no isolated court judgment can remedy the grave consequences of sexual violence.

The OTP can only rely on our network of partners and supporters to maximize the impact of our cases.