



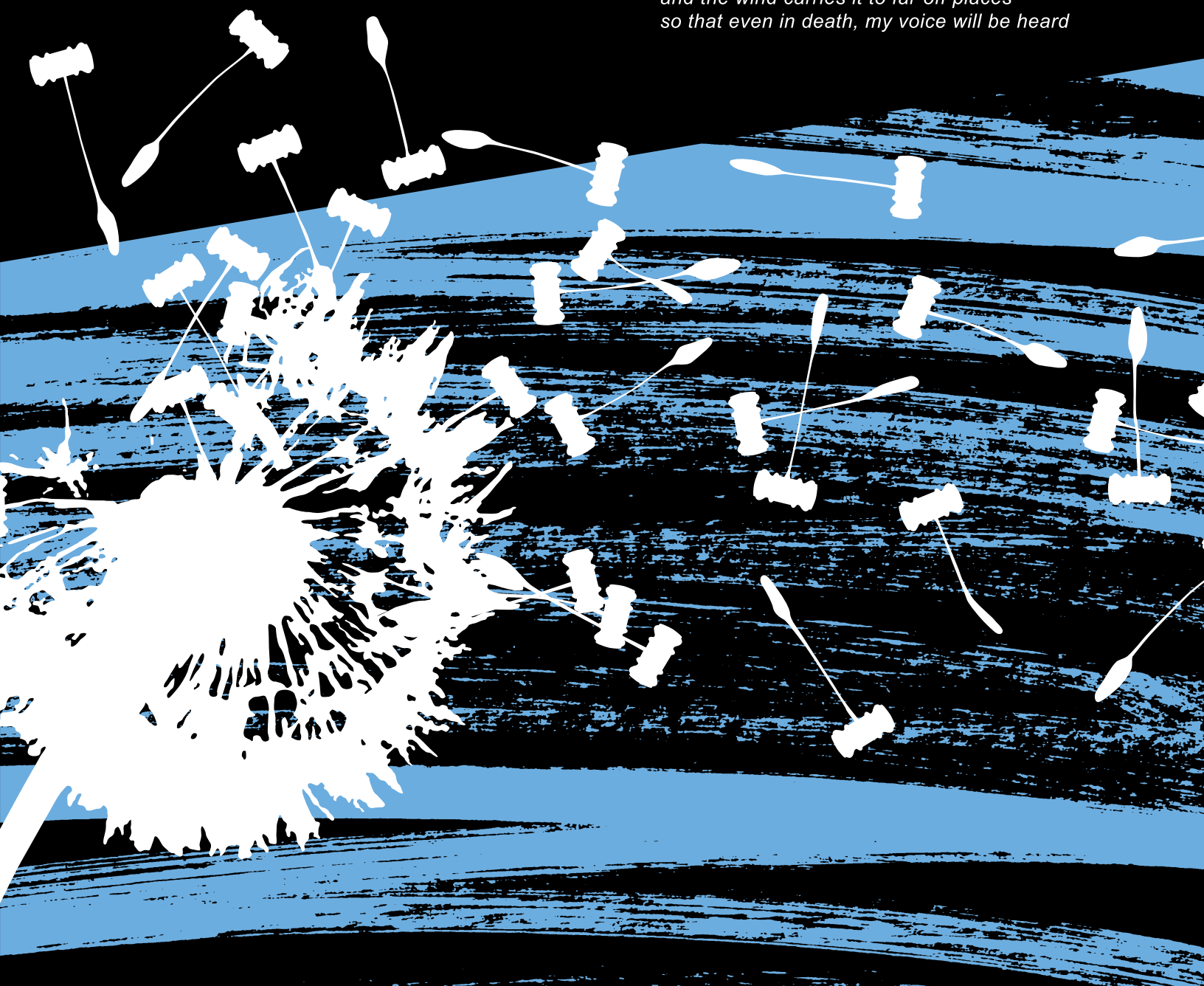
JOAN B. KROC
INSTITUTE FOR
PEACE & JUSTICE
UNIVERSITY OF SAN DIEGO

Global Women's Court of Accountability

A HEARING ON THE VIOLATION OF WOMEN'S RIGHTS 17-18 November 2005

Joan B. Kroc Institute for Peace & Justice at the University of San Diego

*your weapons and threats cannot silence me
for I am not one voice but many
under cover of darkness, the cicadas sing my story
the dandelions whisper it to passers-by
and the wind carries it to far-off places
so that even in death, my voice will be heard*



Global Women's Court Of Accountability

A HEARING ON THE VIOLATION OF WOMEN'S RIGHTS

Joan B. Kroc Institute for Peace & Justice (IPJ) at the University of San Diego's Joan B. Kroc School of Peace Studies is committed to fostering peace, cultivating justice and creating a safer world. The IPJ was founded with a generous gift from the philanthropist Joan B. Kroc, who asked that the institute be a place that not only "talked about peace, but made peace." Through education, research and peacemaking activities, the institute offers programs that advance scholarship and practice in conflict resolution and human rights. The institute's Women PeaceMakers Program documents the stories and best practices of international women leaders who are involved in human rights and peacemaking efforts in their home countries.

This publication was made possible by the generous support of the Fred J. Hansen Foundation, which sponsors the Women PeaceMakers Program at the Joan B. Kroc Institute for Peace & Justice.

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FOREWORD

The Global Women's Court of Accountability was both a public hearing on gross violations of women's human rights by perpetrators acting under cover of conflict or its aftermath and an examination of some current attempts at accountability for these abuses. The Women PeaceMakers Program at the University of San Diego's Joan B. Kroc Institute for Peace & Justice (IPJ) convened this hearing Nov. 17 to 18, 2005 to bring voices for the powerless and defenseless to those with the power of influence in our communities.

Spreading knowledge and encouraging greater solidarity for legal, moral and ethical resources to help millions the world over is the goal of mock tribunals around the world. Primarily held in the global South, previous courts focused on exposing forced sexual slavery during conflict, intentional genocide through rape, and targeted sexual and physical abuse of young women and girls by rebels, government soldiers and peacekeepers. This court joins and amplifies the voices from those courts.

When far-reaching war crimes and crimes against humanity exist, people of conscience have a solemn responsibility to inquire into the nature and scope of these acts. This global court, in addition, moves beyond exposure and demands for actions, to consider what tools and venues can address these crimes against women and renew our sense of humanity.

Herewith, in four sections, the words of victims, witnesses, human rights defenders and an esteemed panel of judges address the depth and challenges of prosecuting violence against women. These are transcripts from the court – the actual words spoken. Edited at times for clarity, this final report seeks to capture the human anguish, experience and judicial expertise of those who testified.

We can and must ask the questions about why violations against women continue, and listen and seek fresh insights together about how these realities can be addressed. Crimes against women are not just domestic issues – they are national and international realities. They are violence against the world. Women cannot remain invisible or ignored in these situations. Impunity cannot reign. The Global Women's Court of Accountability seeks to assure that representative voices are heard, and that policies and protocols are developed to assure accountability.

Dee L. Aker, Ph.D.
Deputy Director
Joan B. Kroc Institute for Peace & Justice

CHAPTER I – THE NECESSITY OF ACCOUNTABILITY

International Bodies and Public Tribunals

WELCOME TO THE COURT

Dee Aker –

Joan B. Kroc Institute for Peace & Justice



Deputy Director Dee Aker opens the court

Welcome to the Global Women's Court of Accountability, a calling to account for the gross violations of women's human rights by perpetrators often acting under the cover of militarism, conflict or their aftermaths. This public tribunal is a people's demand for justice, a demand to end both violence and the impunity allowed the perpetrators of abuse that has so far been so long ignored.

The global court is an event of the Women Peace-Makers Program at the Joan B. Kroc Institute for Peace & Justice (IPJ) at the University of San Diego and has been generously supported by the Fred J. Hansen Foundation. My name is Dee Aker and on behalf of all the global citizens here who brought their hearts and minds and energy to work for this public hearing, I humbly say thank you. Many have worked hard and traveled so far to bring the voices of those too long unheard or ignored into our consciousness. Once in our hearts, we have to act.

Long ago now it seems to me, stepping over thousands of skulls and looking down into open graves with bones still strung with the threads of cloth that once covered them, I was filming a documentary in the Luwero Triangle in Uganda. I suddenly came upon a clearing in a land retaken by wild vegeta-

tion. This was an area where hundreds of thousands of people were missing. I kept running into women, rarely men, hidden in the bush.

There was one particular young woman in this clearing that I came upon who had a 2-year-old on her hip. She was speaking to women survivors of the five-year war in the area. They were seated in a clearing in front of a battle-destroyed coffee factory, a factory which she was putting back together pretty much on her own, with the help of these women around her.

She, like every woman she introduced me to and every girl child 4 years of age, had been raped. Every single woman I met. This had been done by what they called "bandit soldiers," the government soldiers who were fighting against the rebels of the National Resistance Movement. She said, "Women cannot run away so easily. Babies cry – who will care for the children if we go? Who will take care of the food we are growing? Who will see to the elders? No, we must stay here and bury the dead and build again. We cannot run away like the men."

When I asked her if she expected help from the new government for women trying to put themselves and their communities back together after yet another conflict in which government and rebel soldiers had so abused them, she said, "And who will hear us? Will you tell the story, the story of women?"

*... who will hear us?
Will you tell the story,
the story of women?*

Since that day, I have met the "same" woman in Algeria, Colombia, Nepal, South Africa and Sri Lanka. "Who will hear our story?" she still asks me. This court is a humble effort to try and tell her, their, our stories. Perhaps we can change the future; perhaps there can be different stories

*This court is a humble effort to try
and tell her, their, our stories.*

– stories in which women are respected, have their voices for peace heard in decisions to secure peace and justice.

Stories of forced sexual slavery during conflict, intentional genocides, rape or targeted sexual and physical abuse of young women and girls by rebels, government soldiers, peacekeepers – we need to say, “No more,” and bring these women’s voices to the courts in all the world. Mock courts like this one are held often in the South, but they are uncommon here. Let this be one of many to tell the truth.

DISTINGUISHED PANEL OF JUDGES



Fatou Bensouda was elected deputy prosecutor of the International Criminal Court (ICC) in The Hague in 2004. She is in charge of the Prosecution Division of the Office of the Prosecutor. Bensouda previously worked as a legal advisor and trial

attorney at the International Criminal Tribunal for Rwanda, rising to the position of senior legal advisor and head of the legal advisory unit. She has served as attorney general and minister of justice in The Gambia, in which capacity she served as chief legal advisor to the president and cabinet of The Gambia. During her government service, Bensouda represented The Gambia at several international forums, including the negotiations on the treaty of the Economic Community of West African States (ECOWAS), the West African Parliament and the ECOWAS Tribunal.



Joy Ngozi Ezeilo is a senior lecturer at the Department for Public and Private Law in the Faculty of Law at the University of Nigeria. She is a former state commissioner for Women's Affairs and Social Development and a federal delegate to the

National Political Reforms Conference in Nigeria. Ezeilo is a founder of the Women's Aid Collective, a nongovernmental organization (NGO) that promotes the human rights of women and young people through a wide range of services including free legal aid. She is the chairperson of a committee established by the minister of justice and attorney general of the federation to draft legislation on the elimination of violence against women. She has been Regent Professor at the University of California, Riverside, and British Chevening Scholar and has received awards from the Funds for Leadership Development through the John D. and Catherine T. MacArthur Foundation.



Richard Goldstone, former justice of the Constitutional Court of South Africa, was eminent leader in residence at the Joan B. Kroc Institute for Peace & Justice in 2005. From 1992 to 1993, he chaired the Commission of Inquiry into political

violence in South Africa, later known as the Goldstone Commission, during South Africa's transition in the post-apartheid era. The United Nations Security Council named him chief prosecutor for the International Criminal Tribunals for the former Yugoslavia and Rwanda, and he then chaired the Independent International Commission on Kosovo from 1999 to 2001. In 2004 he was appointed by then U.N. Secretary-General Kofi Annan as a member of the independent high-level panel charged with investigating the Oil-for-Food Program in Iraq. Goldstone is a member of the IPJ's International Council.



Carmen Kcomt is a family and juvenile court judge from Peru and has worked in the Domestic Violence Clinic in El Cajon, Calif., as a volunteer through the San Diego Volunteer Lawyers Program. She was a professor at the National

University of Piura and the University of Piura and supervised human rights interns for the United Nations Development Programme in rural villages in Piura, Peru. Kcomt has published more than 70 articles on human rights and contributed to two publications, *Llevarlo el Velo* and the *Manual Sobre los Derechos de los Niños*, as well as a child rights manual used throughout Latin America by the NGO Save the Children. She studied law and political science at San Martin de Porres University in Lima, Peru, and earned a postgraduate degree in International Human Rights Law from Diego Portales University in Santiago, Chile. Forced to leave Peru because of her work for human rights, Kcomt works as a freelance writer in San Diego.



Marguerite Waller is professor of Women's Studies and Comparative Literature at the University of California, Riverside. She has published widely in the areas of feminist theory, contemporary women's movements and feminist border art and

performance. Waller's recent publications include the co-edited works *Frontline Feminisms: Women, War, and Resistance*, which details the work and thought of new feminisms evolving in militarized situations around the world, and *Dialogue and Difference: Feminisms Challenge Globalization*, in which a diverse group of transnational feminist activists and scholars enact a transnational feminist solidarity that sees difference as a practical and intellectual resource rather than as an obstacle to coalition.

CHANGING INTERNATIONAL LAW THROUGH TRIBUNALS

Justice Richard Goldstone –
(formerly) International Criminal Tribunal for the former Yugoslavia



Reading of the Indictment

In 1993, the United Nations ad hoc tribunals began with the criminal tribunal for the former Yugoslavia, followed by the Rwanda tribunal in 1994. Prior to the work of these two tribunals established by the U.N. Security Council, the law of war – or criminal aspects of humanitarian law – was completely ignored. It was not worth more than the paper it was written on. There were no national or international courts to apply these laws. Over the past 12 years, however, the law established by the two U.N. tribunals has revolutionized international criminal law.

Perhaps the most neglected aspect of international criminal law was gender crime: intentional, systematic mass rape used as a tool of war in many countries across a number of continents. Other forms of gender violence were also ignored. It was the global nongovernmental community, particularly in North America and Europe, which encouraged and virtually demanded that adequate attention be given to gender crimes in these tribunals by the prosecutor and the prosecutor's office and staff. And they did. Encouraged by the women judges – although there were only a few of them – they made their voices heard. They established the recognition of gender crime in international law.

The law needed to be changed; it needed to be imaginatively used. I suggest gender crime was neglected mainly because the laws are written by men for men fighting war. For too many men, rape

... gender crime was neglected mainly because the laws are written by men for men fighting war.

in war was an inevitable consequence – not recognized as the intentional, horrible crime it is. The laws were changed and the tribunals in Rwanda and the former Yugoslavia began to find systematic mass rape constituted crimes against humanity, torture and grave breaches of the Geneva Conventions.

This has been an important step forward. We will hear how this is addressed in the Rome treaty¹ of the International Criminal Court, which includes a fulsome definition of the various horrible aspects of gender crimes, including not only systematic mass rape, but also enforced prostitution, enforced pregnancies – horrible concepts that have not been legally recognized until the last decade.

Voices of women have begun to be heard in the international tribunals, but not sufficiently. Cases of women from tribunals in Sierra Leone and East

Voices of women have begun to be heard in the international tribunals, but not sufficiently.

Timor will join the archives from Rwanda and former Yugoslavia. Today and tomorrow, however, we create a forum for women from many other parts of the world whose voices have not been heard. It is important that this issue be kept in the forefront. It must be on the top of the political and legal agenda in the coming decade. In that context, I would like to add my warm congratulations to the Joan B. Kroc Institute for Peace & Justice for this wonderful initiative.

1. Throughout the report, the treaty that created the ICC is referred to as both the Rome treaty and the Rome Statute, the latter being the official name.

WHAT THE INTERNATIONAL CRIMINAL COURT BRINGS TO THE TABLE

Honorable Fatou Bensouda –
International Criminal Court



The International Criminal Tribunals for Yugoslavia and Rwanda have been instrumental in both talking about gender crimes and doing something about them. The substantive and prosecutorial advances made by the tribunals have played a crucial role in the design of the International Criminal Court (ICC) and the inclusion of gender provisions in the Rome Statute.

The landmark Akayesu case decided by the Rwanda tribunal defined rape both as a war crime and as a crime against humanity² – instrumental criminal definitions under the Rome Statute. Equally influential were advances on gender violence issues made within other U.N. divisions. Much of the credit, however, for the extent to which the Rome Statute adopted these advances must go to women's organizations and human rights groups. It is a tribute to their dedication that the statute

gives gender crime the recognition it has been denied for so long.

There are three main components of the Rome Statute and implementing documents that guarantee effective investigations and prosecutions of gender crimes:

- Inclusion of gender crimes in the definitional sections of the statute.
- Requirement of gender balance and expertise.
- Appropriate investigative, prosecutorial and evidentiary mechanisms.

Articles 7 and 8, which define war crimes and crimes against humanity, include a substantive listing of gender-specific crimes, namely, "rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity," which also constitute a grave breach or serious violation of the Geneva Conventions. These definitions apply to both internal and international armed conflicts. Two other gender-specific crimes have been enumerated under crimes against humanity: the crime of gender persecution and the crime of enslavement, "the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children."³

The gender crimes provisions under the Rome Statute which governs the ICC are a significant development under international law, as previous international humanitarian law instruments and treaties failed to properly address sexual and gender violence. Proper investigative, prosecutorial and evidentiary mechanisms are essential. Those charged with implementing the statute must take up their responsibilities. As the deputy prosecutor of the ICC, I am responsible for prosecutions in the court. With my colleagues at the ICC, we will have the opportunity to do this.

Much of the credit ... for the extent to which the Rome Statute adopted these advances must go to women's organizations and human rights groups.

2. The Prosecutor v. Jean-Paul Akayesu.

3. Article 7.2.c.

THE SEARCH FOR GENDER JUSTICE

Honorable Joy Ngozi Ezeilo –
Faculty of Law, University of Nigeria



Gender justice is an imperative and inseparable part of post-conflict reconstruction. We know that women have suffered in conflict situations. Rape has been used as an instrument of war all over

Gender justice is an imperative and inseparable part of post-conflict reconstruction.

the world. Today we know that international law, including the Rome treaty, has clearly prohibited gender crimes as crimes against humanity. In the Yugoslavia and Rwanda tribunals, we are beginning to see convictions of those who commissioned these acts. The message from these tribunals is clear: accountability for crimes committed during war and conflict situations.

Without justice, the search for peace will continue to elude us. States, individuals and groups must be held accountable for impunity and abuse of women, including violence against women in private and public spaces. Justice will help women who have suffered violence and are traumatized by those experiences.

Although we have recorded successes in using humanitarian and human rights frameworks

Without justice, the search for peace will continue to elude us.

to address gender crimes against humanity, the successes are too few and far between. The challenge of providing effective, efficacious and timely remedies remains. I hope this global tribunal will fully articulate strategies to increase redress for women victims and survivors of gender crimes locally, nationally, regionally and internationally.

Please join me in saying a resounding “No” to violence against women; a resounding “No” to impunity for gender-based crimes against humanity; a resounding “No” to perpetrators of gender crimes and institutions, including states, who condone such acts. Let us say a big “Yes” to a just and lasting peace; a big “Yes” to human rights of women; a big “Yes” to the elimination of all forms of violence against women. We must all join the call for peace founded on justice. It is our collective responsibility to work toward justice, equality, sustainable peace and development.

CHAPTER II – SURVIVORS SPEAK: Testimony of Survivors, Witnesses and Human Rights Defenders

COMFORT WOMEN OF WORLD WAR II

Menen Castillo, Philippines
(Interpreter: Neila Sancho)



Menen Castillo is president of *Lolas Kampanyera*, a Filipina “comfort women” survivors group. She was forcibly abducted from the province of Pampanga in the Philippines at the age of 14 by Japanese military troops in World War II and forced to become a sex slave at the Japanese military garrison in Arayat.

Today is an important one for me because I have

come here to testify on behalf of the survivors’ group *Lolas Kampanyera* and of my experience, at the Global Women’s Court.

I am Menen Castillo, 76 years old. I was a victim of the comfort women system in World War II – the Japanese military sexual slavery. In 1942 I was only 14 years old when the Japanese army came to invade the Philippines and posted themselves in military garrisons, including in my hometown Arayat, Pampanga.

One morning I was alone in the house and suddenly the Japanese soldiers conducted a surprise raid on our village, came up to my house and took me. They forcibly brought me to a military garrison set up at Arayat elementary school; from then on it was a nightmare for me. That night I was raped by the soldiers. I was burned on my neck by a lighted cigarette. I couldn’t believe what happened to me. They forced me to serve sex to the soldiers every day following my abduction. How could the Japanese soldiers rape me? I was only 14 years old.

After that experience it was still very painful, but I tried to overcome it. I married Amado Castillo and had one son with him. When I heard other survivors like me had decided to make their stories public and demand accountability from Japan in 2000, I was glad. Although I suffered from shame,

Although I suffered from shame, I decided to join the organization, to raise my voice with the other victims.

I decided to join the organization, to raise my voice with the other victims. It took courage to demand an apology and legal compensation from the Japanese government.

Since I joined the organization, we survivors have lobbied Philippine legislators to support our issue. But, in December 2004, I learned that our Philippine Congress had quickly passed a resolution to support Japan’s bid for a permanent seat in the

IN FOCUS: Comfort Women⁴

During World War II, the Imperial Japanese Army subjugated much of East and Southeast Asia, including parts of China, Indonesia, Korea, Malaysia, Myanmar, Philippines and Vietnam. They instituted a system of sexual slavery using 200,000 forcibly recruited local women, euphemistically called “comfort women.” These women were forced into prostitution, raped by up to 20 soldiers a day. As the occupying Japanese forces retreated at the end of World War II, women who were recruited as comfort women were abandoned, starved or killed. After the war, many survivors never returned to their homes out of shame and most suffered from psychological trauma for the remainder of their lives.

4. The information in this In Focus box is taken from <http://comfort-women.org/history.html> and “Still Waiting After 60 Years: Justice for Survivors of Japan’s Military Sexual Slavery System,” an Amnesty International report.

U.N. Security Council. When I learned about this I was very angry. I cried and was very emotional: How could our government support Japan and not us, the victims?

And so, I am happy to be able to come here and reach the international community – if I could not get support from my own government, who can help me? I am already old and many of my fellow survivors have passed away.

I thank all of you for giving a space to hear my story and to reiterate our call for accountability from the Japanese government.

DEMANDS FOR ACCOUNTABILITY

- Official apology from the government of Japan.
- Financial redress to each of the survivors.

Neila Sancho, Philippines



Neila Sancho is the national coordinator of *Lolas Kampanyera* and a researcher for the case of Filipina “Comfort Women” victims of Japanese military sexual slavery in World War II. She is also co-founder and was the regional coordinator of the Asian Women’s Human Rights Council.

I have worked on this issue since I heard the first Korean survivor tell her story in 1991. In Seoul at a conference on trafficking and women, Kim Hak Sun came forward with her experience. We heard her story, and the Asian Women’s Human Rights Council decided to support her.

During World War II more than 200,000 women, mostly Koreans, were conscripted into service as comfort women. As I speak today, there are fewer than 1,000 living survivors; many died of shame for circumstances that were not their fault.

What these women went through was indescribably horrible. The women’s suffering did not cease with the war. Many of these women never married. In peacetime, they fled their hometowns to escape from the stigma attached to the rape. They sought anonymity in the big cities where they lived in abject poverty.

Invisible to the naked eye are the psychological remnants of the wartime ordeal. Sixty years following the end of the war, Filipina women survivors like Felicidad Cabrito, 76 years old, continue to

Invisible to the naked eye are the psychological remnants of the wartime ordeal.

reel from nightmares, phobias, psychosomatic disorders and the existential angst attendant to public stigma.

The comfort women system was instituted in 1932 as the Japanese army moved to China after the Shanghai Incident. The Japanese military established comfort stations for its soldiers – yet denied any involvement in or knowledge of comfort women recruitment. Only after Yoshiaki Yoshimi of Chuo University in Tokyo discovered written instructions to create military comfort houses and conscript comfort women, in Japan's Defense Agency, directly linking the Imperial Army to the operation of comfort women stations, did Japan finally acknowledge its role. The orders were issued

The orders ... issued by the Shanghai Expeditionary Army during the 1930s point ... to the participation of the ... army's highest command.

by the Shanghai Expeditionary Army during the 1930s, pointing to the participation of the expeditionary army's highest command: the general chief of staff of the Imperial Army and the minister of the army authorized by the emperor.

In May 1942, Japanese agents traveled to Korea to enlist girls for comfort service in the newly conquered Southeast Asia territories. They deceived the girls, saying the work would be visiting the wounded in hospitals, rolling bandages and generally making the soldiers happy. Many girls enlisted for overseas duty based on this false representation.

While in the custody of Japan, comfort women underwent severe torture. They were subjected to and witnessed rape, sexual abuse, beatings, mutilation and murder. Wartime studies indicate prolonged captivity threatens an invasion and erosion of personality which can result in loss of sense of self. The physical and psychological effects of military slavery and war victimization on these women are not yet fully known.

Many people think that since this happened more than 60 years ago, there are no more effects of that trauma. However, studies show many traumatized people remain psychologically imprisoned in



Panel of judges listens to testimony regarding sexual slavery during World War II

the timelessness of their captivity despite survivors' attempts to obliterate wartime memories to provide a semblance of a normal life. In its extreme form, the suppression of the past can result in dissociative disorders, where the victim lives simultaneously in two realities.

Psychosomatic disorders are common and rooted in the perception of the torture victim that his/her body has turned against them. They report a range of somatic symptoms including tension headaches; gastrointestinal disturbances; abdominal, back or pelvic pain; tremors; choking sensation; rapid heartbeat; and numbness.

Specific studies of Asian women survivors who broke their silence after 50 years found long-term effects of wartime trauma on psychosocial functioning. Some manifest major disruptions such as persistent phobic reactions in otherwise benign situations, or respond to intrusive wartime memories with physiologic reactions, e.g., palpitations and tremors. Others demonstrate attitudinal stances of passive behavior associated with prolonged captivity. Many continue to suffer from post-traumatic stress disorder, including fear and anxiety responses and depression.

In Korea, those who survived sexual slavery and massacres continue to demonstrate every Wednesday in front of the Japan Embassy in Seoul. These women, now grandmothers, bring photos of the past – their young faces a reminder of the innocence brutalized in war. While the Korean government denied the existence of comfort women in other countries, Korean survivors

joined with survivors from the Philippines, Taiwan, Indonesia and other affected countries to tell their shared stories of heinous acts of torture, captivity, sexual enslavement and forced labor.

In September 1992, Rosa Henson was the first survivor from the Philippines to speak out. She gave fellow survivors, or Filipina lolas, grandmothers, strength as she told the public she was a former comfort woman. Henson broke the shame that had silenced them for decades. She demanded justice and compensation from the Japanese government. Since then, more than 300 cases have been documented by the task force founded by Filipina comfort women in June of that year.

Survivors have organized and empowered one another to lead a campaign for legal redress. They call for the inclusion of their stories in history textbooks in the Philippines, Japan and other affected countries. Their legal battle for individual compensation and public apology from the Japanese government seeks justice not only for wartime victimization but also for their damaged lives and psyches long after the end of World War II.

Supporting the survivors' campaign, the international solidarity movement has opposed Japan's bid to win a seat as a permanent member of the powerful U.N. Security Council. It has set a number of preconditions, specifically that Japan must show goodwill to settle its debts of atrocity and wrongdoing in World War II before seeking permanent membership on the U.N.'s most powerful body.

During the 14-year campaign for legal redress, restitution and reparations for the comfort women, two U.N. special rapporteurs have recommended the Japanese government issue legal compensation and an official apology to the survivors. International human rights and lawyers' organizations have done research and issued similar recommendations.

Despite these national and international calls for redress, the Japanese government has not settled or distributed any compensation. Japanese citizens have collected private funds which were rejected by the survivors. The Philippine government issued limited funding, but it did not reach survivors in Taiwan, Korea or other countries. The demand is for the Japanese government to acknowledge its responsibility and directly contribute

to reparations for the victims.

Our hope is that in 2005, 60 years after the end of World War II, the Japanese government and the emperor will make a moral wrong right. There is increasing urgency as survivors are dying as days pass.

I thank the organizing committee and judges of this Global Women's Court for expressing solidarity for the cause of comfort women and other victims of war in armed conflict situations. We hope that you will join the ongoing demand for accountability from the Japanese government.

Demands for Accountability

- Official apology issued by the Japanese government recognizing its responsibility for survivors' suffering.
- Legal compensation and reparations from the Japanese government to survivors.
- Inclusion of comfort women's stories in history textbooks in the Philippines, Japan and other affected countries.

THE “DISAPPEARED”

Adriana Portillo Bartow, Guatemala



Adriana Portillo Bartow, an advocate for human rights and a survivor of the war in Guatemala, is the deputy director of Amnesty International's Midwest Regional Office. She is also the founder of the Guatemala-based organization *Where are the Children?*

I testify with the hope that I am, even if in a small way, working for the truth and justice for the relatives of the disappeared in Guatemala, throughout Latin America and in other countries around the world where disappearances have become a common practice.

IN FOCUS: Guatemala

The beginnings of the conflict in Guatemala – a battle between the leftist, mostly Mayan insurgent groups and the national army, which received backing from the United States – can be traced to the early 1960s. The ensuing 36-year internal armed conflict left over 200,000 dead or disappeared and over 1 million refugees and internally displaced people. Government forces were responsible for over 85 percent of these human rights violations.⁵ The violence during the armed conflict disproportionately affected indigenous Mayans, who suffered 83 percent of the violations while comprising only 60 percent of the total population. The scorched-earth policy reflected in over 650 massacres, orchestrated by Romeo Lucas García and Efraín Ríos Montt in the early 1980s, razed entire villages and destroyed the social fabric of the communities. Victims still live alongside perpetrators, producing a climate of fear and silence.

5. Report of the Commission for Historical Clarification.

I testify with the hope that I am, even if in a small way, working for the truth and justice for the relatives of the disappeared in Guatemala, throughout Latin America and in other countries around the world where disappearances have become a common practice.

My name is Adriana Portillo Bartow and I am a survivor of the war in Guatemala. I am also a mother who for the last 24 years has had to live without knowing the whereabouts of her two oldest daughters – 10 and 9 years old at the moment of their disappearance by Guatemalan security forces in 1991.

Guatemala is a nation of breathtaking nature and beauty. It is a country of great cultural wealth, but also a country where despicable atrocities took place throughout the 36-year war. The majority of Guatemalan people are indigenous Mayans, representing 22 different ethnic groups – all with their own language. For centuries, they have lived on the margins of society, discriminated against and persecuted. According to the U.N.-sponsored Historical Clarification Commission, the genocide produced a painful legacy of over 200,000 people killed or disappeared, 1.5 million people displaced or in exile, 250,000 widows and orphans, 666 massacres, an economy in shambles and the social fabric completely destroyed.

Of the almost 50,000 people disappeared in Guatemala during the war, 11 percent were children. After a massacre, the children were picked from among the bodies spread across the land by soldiers and army officers to be raised as war trophies or servants. Others were taken by government security forces to be sold into adoption in Europe, United States and other parts of the world. These children live unaware of the painful reality that brought them to where they are today.

At the height of the war in the early 1980s my brother was killed and six family members detained and disappeared by the Guatemalan security forces. On July 25, 1981, while I did chores

around the house, I watched TV as 1,000 army officers, soldiers, national police, plain-clothed men, tanks and helicopters bombed a house in a wealthy neighborhood of Guatemala City. When the smoke cleared, a group of journalists was allowed to enter the house and showed the bodies of the victims: five men and three women. On live television, I saw that one of the bodies was my brother Carlos. He was 23 years old. His death caused me a great deal of pain, but I could never ever imagine what was yet to come.

On September 11 – I have my own September 11 – a large group of men from the national police, army and secret police surrounded the block where my father lived. In two separate but coordinated military operations, they kidnapped my father, my stepmother, my sister-in-law, my 18-month-old sister and my two oldest daughters. Never to be seen or heard from again, my family members remain part of the long list of the disappeared in Guatemala.

... my family members remain part of the long list of the disappeared in Guatemala.

Unaware of what had happened, I arrived at my father's house only a few hours after the detention and disappearance of my family. I was surrounded by a group of men who began to interrogate me. I really do not remember how long the interrogation lasted. It could have been two hours; it could have been 20 minutes; it could have been 10 hours – I completely lost track of time. But, during the questioning, I watched as a group of men used water hoses to wash the floors of my father's house.

The men asked: "Have you been in this house before?"

"Of course I have been in there, it was my father's house," I explained.

"Have you seen this dog before?"

"Yes, it's my father's dog."

"What is your relationship to the people in this house?"



Child lighting candles to commemorate the National Day of the Disappeared in Guatemala

"It was my father's."

I tried to turn around to leave. It was only then that I remembered that my daughters had gone to my father's house to celebrate a birthday. It was like a bomb hit me. From that moment on my life has been torture, every day torture, because I do not know what happened to them, if they are alive or dead. If alive, I do not know where they are. And, if they are dead, I have no idea where their bodies are or where their bones lie.

My entire family was involved in the movement for social justice, economic justice, in Guatemala at different levels. We were punished for our involvement. They abducted the children to send a clear message: Be quiet, don't do anything, because we are capable of doing this and more.

According to any English dictionary, to disappear means to vanish, to cease to be, to cease to exist. The word even brings to mind images of magical intervention. But behind every man, woman and child that has been disappeared there is a series of real decisions made and implemented by real people. Nobody disappears. Nobody.

... behind every man, woman and child that has been disappeared there is a series of real decisions made and implemented by real people. Nobody disappears. Nobody.

As a mother of two young children, a sister of an 18-month-old baby girl, the daughter of a 70-year-old man, to me disappearance is the perfection of torture. It not only affects the disappeared them-

... disappearance is the perfection of torture. It not only affects the disappeared themselves, but also their relatives, their communities, their countries and society in general.

selves, but also their relatives, their communities, their countries and society in general. We, the surviving relatives, are left to live always wondering what happened.

The disappearance of my daughters, my father, my little sister and my other relatives and the assassination of my brother almost destroyed me. It has had a tremendous impact on my two surviving daughters and on the other surviving family members. While the perpetrators go on with their lives like nothing happened, we the survivors, the mothers, the wives, the sisters, the daughters, have only pictures and birth certificates to prove that our loved ones indeed existed. Their existence is denied.

I had always suspected that my father, my stepmother and my sister-in-law were most likely tortured and killed. But I had hoped that they had spared the lives of the children. In 1996 when the final peace accord was signed ending 36 years of war, I returned to Guatemala in search of my daughters and my little sister. I returned to denounce, for the first time in my own country, what had happened and to seek justice.

I went to Guatemala 15 times between 1997 and 2003, searching for the children, struggling for my voice to be heard and for the perpetrators of such a heinous crime to be brought to justice. I met with the press three to four times a year. I spoke with several governmental officials and human rights defenders. Those in the government had no interest in providing assistance for the case. The human rights defenders had insufficient resources to help me. Those 15 trips yielded no results.

I visited the U.S. Embassy in Guatemala several

times, addressing the ambassador and human rights officers. Perhaps that was naïve of me; they had no interest in helping me because the U.S. had funded the Guatemalan military throughout the war. I worked within the Guatemalan justice system, filing a lawsuit – the first of its kind after the war – against the high-ranking officers responsible for my family's disappearance, but it never investigated the case.

I decided to join Rigoberta Menchú's lawsuit in Spain, and only a few months ago we heard the Spanish courts have finally agreed to hear all our cases, not only those of Spanish citizens. With this, there is a tiny hope there that justice will be done for Guatemala. While many foreign governments have constitutions that include the responsibility to prosecute human rights violators regardless of nationality, they are afraid to prosecute these criminals because of military and economic aid that they get from the United States. However, we believe that one country in the world will have the courage to bring Guatemalan criminals to justice.

I sought other methods. My testimony is case 87 in the final report of the U.N. Historical Clarification Commission. In the Catholic Archdiocese's Recovery of Historical Memory project, the case of my family is included in the chapter on disappearances. Despite meeting with the U.N. Verification Mission in Guatemala, charged to monitor the implementation of the peace accords, it was ineffective in ensuring disappearances were investigated.

In the international arena, I went to Geneva and testified before the U.N. Committee against Torture. In 1987, I met with members of the task force on forced disappearances which forwarded my case to the Guatemalan Presidential Human Rights Commission in 1992. The case sat unopened until I visited the commission five years later. In essence, the case is closed. My struggle, represented by this list, is very long.

In the United States I filed a Freedom of Information Act request about two or three years ago asking for information the U.S. government has on my family. The response was a couple of letters which stated that the U.S. government was in possession of four documents on the case. Only four documents when my case is public? Only four documents when our case has generated hundreds of media articles in Guatemala? I am public

everywhere I go; my job is to denounce human rights violations in my country – but they said only four documents. I learned that two of those documents are 75- and 78-page faxes about our case sent from the U.S. Embassy to D.C. Those faxes, however, were not released to me due to “national security concerns.” National security concerns – but no concerns for me, a mother in the dark about the fate of her children and who is responsible. Another dead end.

I have done an uncountable number of things to find out the truth and to bring the perpetrators to justice, and I have had no results. The worst part: I am not the only one. As part of *Where are the Children?*, I work with hundreds of Mayan families who are searching for the whereabouts of their children, dead or alive. We have located approximately 60 to 70 cases of children who survived, but the majority – 170 children – were murdered. We have exhumed about 50 of those bodies and returned them to their families. As in my case, the Guatemalan government has completely dismissed their claims for justice and truth.

They face additional obstacles: The Mayan families do not speak Spanish and have few resources. They live every day in silence and fear of retaliation if they were to find out the truth. Therefore, I have taken it upon myself to speak for them. Like me, all those families, all those mothers, wives, sisters and daughters wake up every morning to live one more day with the uncertainty of not knowing, to live one more day with the pain and tears.

People tell me that after so many years it is time to let go. It is time to begin the process of healing. But there can be no healing for a mother or a daughter or a sister or a wife who has seen her loved ones disappeared. There can be no future until the day when we find out what happened to our relatives. There can be no healing until the day those responsible for such a heinous crime are brought to justice.

Demands for Accountability

- The truth about the disappeared be revealed to relatives in Guatemala and all countries in which disappearances are a common practice.
- Pursuit of justice for the perpetrators of disappearances in national and international systems.
- Declassification of U.S. documents with information about the fate of the disappeared in Guatemala.
- Support for healing processes for the families of the disappeared.

ABDUCTIONS, GIRL CHILD SOLDIERS AND RAPE BY REBEL AND GOVERNMENT FORCES

Sister Pauline Acayo, Uganda



Sister Pauline Acayo is a peacebuilding project officer for Catholic Relief Services in Gulu, Uganda. She was a Woman PeaceMaker at the IPJ in 2005.

IN FOCUS: Uganda

The Lord's Resistance Army (LRA), led by Joseph Kony – who claims to be a spirit medium and wants to lead the country according to the 10 Commandments – has been fighting the government of Yoweri Museveni since 1987. The LRA abducts children into its ranks to fight as soldiers or serve as porters and sexual slaves; the estimates for the number of children abducted over the years are between 20,000 and 80,000.⁶ Despite many failed peace attempts over the approximately 20 years of war, the fighting has led at times to the displacement of over 80 percent of the population of northern Uganda, many of whom remain in internally displaced persons' camps. Five LRA commanders were indicted by the International Criminal Court in 2005.

Many of you have heard about the war between the Lord's Resistance Army, led by Joseph Kony, and the government of Uganda, raging in northern Uganda since 1986. The fighting has led to the destruction of infrastructure, abduction of young girls and boys, forced displacement to internally displaced persons (IDP) camps, torture and killing, and sexual violence and exploitation. Women are

the most vulnerable.

As a witness, I am here to share the suffering of women and young girls in this war-torn zone of Uganda. I grew up there, my brothers were killed there. I barely escaped with my own life after sev-

I barely escaped with my own life after several attempted abductions. Today I speak for the women and girls who did not escape.

eral attempted abductions. Today I speak for the women and girls who did not escape.

Of those abducted, almost half are women and young girls, some only 7 years old. Most are abducted during attacks, from their houses or when traveling to collect firewood or to look for safety (i.e., night commuters).

The LRA indoctrinates the girls into the ways and beliefs of Joseph Kony. They train the girls as soldiers, forcing them to kill by beating people with clubs, knives and machetes. Some are forced to kill their own parents, relatives and children.

Tied by ropes even while sleeping to avoid escape at night, women and girls are used as domestic and sexual slaves. Sometimes the rebels assign girls to top commanders as "wives." In other cases, they let girls "choose" their husbands from picking out his shirt from a pile on the ground. The abductees live in fear. Victims of frequent beatings, they face the risk of unwanted pregnancies and sexually transmitted diseases like HIV/AIDS.

Where are the Geneva Conventions? "Persons taking no active part in the hostilities ... shall in all circumstances be treated humanely" as stipulated in Article 3 of the Geneva Convention relative to the Treatment of Prisoners of War adopted Aug. 12, 1949.

The women and girls who survive abduction face continued challenges when they return home. Three-fourths of those who escape come back with children; with rebel fathers in the bush, the young mothers have nothing to help them to raise the children – they also are vulnerable to sexual

6. As noted in a report by the Survey of War Affected Youth, the highest estimate of abductees is 80,000. http://www.sway-uganda.org/SWAY_ResearchBrief_Reintegration.pdf.

exploitation. Survivors recount the cruelty of individual and gang rapes by government soldiers, forced prostitution and extreme deprivation in IDP camps.

Where are human rights? According to the Universal Declaration of Human Rights, "Everyone has the right to life."⁷

"I cannot forget the first time I killed," an 8-year-old girl said when her 45-year-old husband commanded her to do a special job for him. "I was ordered by my husband to put a baby in a large pounding mortar and kill [the baby] by pounding. I was terrified because I knew if I did not do it, then I would be killed. So I did and my body was shaking. Killing a human being for the first time was not easy, but it became easy when I got used to it." If you refused to follow such orders given by commanders they cut off your nose, lips and ears. They sew together your eyelids and mouth and leave you to die.

In 1999, 30 women traveled together back to their village to collect food. The rebels captured them, cut off their breasts and plucked out their eyes. Many of the women died on the way to the hospital because of the bleeding.

Rape is rampant. I witnessed a woman who was killed when the rebels pushed a long stick from her mouth to anus because she had protested an attempted rape. Elderly women, who are not able to run when the rebels come, are raped and left to die.

In 2004, the rebels attacked Lira district in northern Uganda. They collected women with babies, split open the abdomens of cows, packed the babies inside and sewed them back in place. As the babies suffocated to death, the mothers were tied upside down to tree branches and huge logs were used to beat them. They were left to suffer.

These women suffer more than anybody in northern Uganda.

Every Ugandan has a right to live in a society where human rights are respected and cherished. Chapter 4 of the Ugandan constitution on the protection and promotion of fundamental and other human rights and freedoms states, "The rights and freedoms of the individual and groups enshrined in [the constitution] shall be respected, upheld and



Sister Pauline Acayo with children born to mothers abducted by the LRA

promoted by all organs and agencies of Government and by all persons."⁸

The government has repeatedly promised to respect human rights; it has signed and ratified a number of legally binding international human rights treaties, including the U.N. Covenant on Civil and Political Rights; African Charter on Human and People's Rights; U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the Convention on the Elimination of All Forms of Discrimination against Women. Yet in practice, Uganda's human rights record is still stained by repression and lack of accountability.

While the government of Uganda has brought a case before the ICC, I remind the international community that abuses of women's human rights are committed by the rebels and the government soldiers. There must be discussion of accountability for both top rebel commanders and government soldiers who have killed and perpetrated atrocities.

As the ICC begins to investigate, peace negotiations must continue. It is difficult for the two to go hand in hand, however. Hearing the ICC has

The ICC can continue with the cases against the top five rebel commanders, but we still need peace talks to continue; 20 years of guns have not helped.

7. Article 3.

8. Article 20.2.

issued arrest warrants, the rebels intensified their activities to demonstrate to the government their power to resist. The ICC can continue with the cases against the top five rebel commanders, but we still need peace talks to continue; 20 years of guns have not helped.

Today I recommend the Global Women's Court of Accountability urge the United Nations to deploy a peacekeeping mission to Uganda. I ask the honorable judges and audience of the court to pressure the Sudanese government to expel the rebels back to Uganda and for the Ugandan government to end the war through peace negotiations.

Demands for Accountability

- Respect for and adherence to the Geneva Conventions and other international human rights agreements signed by the Ugandan government.
- Protection of women and girls provided by the government of Uganda.
- Prosecution and punishment of both top rebel commanders and government soldiers who have killed and perpetrated atrocities.
- Deployment of a U.N. or international peacekeeping force to northern Uganda to protect civilians.
- Return, by the Sudanese government, of rebels who are active in Sudan, so that they can be held accountable in Uganda.
- Negotiations to end the 20-year war, suffering and impunity.

RAPE BY GOVERNING FORCES DURING GENOCIDE

Marijana Senjak, Bosnia-Herzegovina



Marijana Senjak is the program director for *Medica Zenica*, an NGO based in Bosnia-Herzegovina. She is also the founder of the *Center for Psychological Help in the War in Zenica*, and in 2005 was one of the 1,000 women nominated for the Nobel Peace Prize.

I would like to address the court on behalf of clients and associates of the human therapy center, *Medica Zenica*, established in April 1993 in Bosnia and Herzegovina. The women's therapy center *Medica Zenica* was established to provide gynecological, psychological and general medical support to the war rape survivors. Monika Hauser, a feminist gynecologist from Germany, came in December 1993 and mobilized local professionals and established the trauma shelter for war rape survivors.

In war-torn Bosnia and Herzegovina, it was necessary to provide accommodation, shelter. It is a trend observed around the world: a shelter for trauma survivors. In the last 13 years of work, *Medica Zenica* has provided support to 150 war rape survivors. It also sheltered and treated medically and psychologically 1,200 women and children survivors of other war trauma. When we look at the profile of survivors in Bosnia and Herzegovina who got support in our center, they survived a range of other traumas: one, they were displaced from their villages; two, they were tortured in concentration camps; three, they were raped; four, they suffered loss of family members; and five, they became refugees themselves.

IN FOCUS: Bosnia-Herzegovina

In the midst of the breakup of the Socialist Federal Republic of Yugoslavia, brutal violence broke out in Bosnia-Herzegovina after a referendum for independence was passed in the multiethnic republic in 1992. Bosnian Serbs boycotted the vote, which resulted in 99 percent of the Bosnian Muslims and Bosnian Croats voting for independence. The Bosnian Serbs, backed by Slobodan Milošević and the Serb leadership in Belgrade, then declared their own republic within the borders of Bosnia – sparking a war, including the siege of Sarajevo, which lasted until 1995. It was characterized by ethnic cleansing, torture and systematic rape in concentration camps and elsewhere, and other war crimes and crimes against humanity. Nearly 100,000 people are estimated to have been killed during the course of the war, millions were forced to flee their homes as refugees and as many as 20,000 to 50,000 women and girls were brutally raped. The Dayton Accords ended the war and established two virtually ethnically pure territories: the Bosnian-Croat Federation and the Republika Srpska. The U.N. Security Council established the International Criminal Tribunal for the former Yugoslavia in 1993 to bring to account the perpetrators of violations of international humanitarian law during the wars throughout the whole territory of the former Yugoslavia, including Bosnia.

At *Medica Zenica*, we observed three basic patterns of war rapes. One was represented by Jadranka Cigelj and Nusreta Sivac when speaking about rape in Prijedor in the documentary film, "Calling the Ghosts."⁹

I just want to make a point about their status. Nusreta Sivac was a judge in Prijedor, the city that became controlled by the Serb paramilitary in the war and that is now run by Serb authorities. In a reception with the mayor of Sarajevo, the capital of Bosnia and Herzegovina, Sivac said by way of introduction, "My profession is victim." The significance of what she provided in her testimony is that when she returned to Prijedor, she had difficulty returning to her own apartment, her own property, and she knew that she would never be employed as a judge again. She now runs an organization for human rights.

9. Portions of the film were screened prior to Senjak's testimony. More information on the film can be found at <http://www.balkansnet.org/mandy.html>.

The other pattern that we observed in our work was the pattern of the soldiers who conducted rape in occupied villages. They often separated men and women in school classrooms or sports halls. Night by night they took women away and raped them. When we speak with war rape survivors they tell us that some women did not return. What does this mean? It means that they were killed, supposedly killed – or we can call them disappeared.

The third pattern that we observed concerned house imprisonment, where a sort of slavery took place. One of our clients was a woman who

One of our clients was a woman who was at the disposal of one Serb commander for six months, and another woman in the region of Croat-paramilitary-controlled Čaplinja was imprisoned and repeatedly raped.

was at the disposal of one Serb commander for six months, and another woman in the region of Croat-paramilitary-controlled Čaplinja was imprisoned and repeatedly raped.

In our center during the war, we treated 26 survivors in 1993, 22 in 1994, 10 in 1995, and in the years 2000, 2001 and 2002, we had an increase of cases of war rape survivors because we were able to reach women in the Republika Srpska, territories that we as an NGO were not able to reach during the war. We also found out through outreach work that in some places, like Glamoč, one woman was raped and she was forced to be naked in town. We also discovered that a daughter of one of our clients who was raped during the war was sexually abused at the age of 12 during the war by a Serb officer, but it wasn't reported to us in 1995 when the mother was treated.

During the same period, 12 women gave birth to children born of rape, and seven abortions were performed in the hospital in Zenica, Bosnia and Herzegovina, according to standard procedures and with permission of gynecological experts on violence. In the majority of cases, these were high pregnancy abortions, meaning that women were in their sixth or seventh month of pregnancy.

And just for this presentation I will come to the analyses of the forms and psychological consequences of rapes women survived in Bosnia and Herzegovina. I call these phenomenological, experiential aspects of war rape because the analyses came from our direct, professional, psychological work. Each analysis is titled by quotations from our clients in group or individual therapy, for the purposes of bringing their voices to the court.

“When somebody says the word ‘rape,’ it is as if somebody is calling my name.” The words, said by a girl survivor of war rape, describe the idea that the girl's whole identity is seen and distorted by the rape she survived. Rape is an attack on the physical, psychological, sexual and social integrity of the survivor. It is an act of violence and abuse of power, but it is not connected with sexu-

Rape is an attack on the physical, psychological, sexual and social integrity of the survivor. It is an act of violence and abuse of power, but it is not connected with sexuality.

ality. The sexual sphere is chosen by the perpetrator as the most intimate, sensitive and vulnerable sphere to hurt and humiliate women and girls the most.

This woman today lives with her 11-year-old daughter, and she also married. Several articles and documentaries exist about her relationship with this child born out of rape. It is still an ambiguous relationship. When the client was in our center with her baby, there were days when she put forth a lot of effort to be a good mother, because she wanted to be a good mother. But there were days when she would come and say that the face of the baby reminds her of the perpetrator. And in understanding trauma consequences, this is a trigger. Trauma memories and any similarities are triggers for the situation in which she was raped. There are still some situations today when she becomes angry at her 11-year-old daughter, at the face of the perpetrator that appears in front of her. The story about this client is presented in the article “A Cradle of Inhumanity,” by Christine Toomey in the Nov. 9, 2003 *Sunday Times* issue.¹⁰

10. http://www.timesonline.co.uk/tol/life_and_style/article1006031.ece



CHAPTER II

Rape in Genocide, Bosnia

“I will kill you. I will kill your children,” is the threat told by perpetrators to almost all of our clients who are rape survivors. War rape always means facing death. Threatening life is at the core of both war rape and civil rape. Children are also often present during the rape. Some women beg perpetrators to kill them, as demonstrated by a collection of stories of women who survived war rape in Bosnia. The book’s title is *I Begged Them to Kill Me*¹¹ - not to rape me but to kill me.

“You could be my son,” said a 52-year-old woman to the young perpetrator in an attempt to convince him to give up. Survivors call on perpetrators’ humanity and normal human feelings in an effort to defend themselves from rape. This is one of the active coping strategies with rape as a traumatic event. It could be connected with lower probabilities of the development of post-traumatic stress disorder symptoms. Calling for a perpetrator’s humanity is an attempted coping mechanism of civil rape as well. The perpetrator in this case was a young, 26-year-old Croat soldier who raped two women on the same night: One was a

30-year-old with three children, and the other was the 52-year-old woman. This data we submitted to the International Criminal Tribunal for the former Yugoslavia (ICTY), who was interested because it was a case of the same perpetrator.

“I gave children to him, to my husband, in fact I saved his children.” These are common words of women who survived war rape. It is their attempt to find meaning in violence and sacrifice they had to pass through. Long-lasting therapy work for women was needed to find meaning in saving their own lives, because their own lives were not seen as worth anything.

“How to tell to my husband?” Women who survived war rape suffered from intensive feelings of shame and guilt as well as from fear that they will not be accepted by their husbands, that they will be blamed and rejected by their husbands.

“Now, we are the same.” During our therapy work, we met impressive sensitivity and ability of husbands to accept their wives, war rape sur-

11. *I Begged Them to Kill Me: Crime Against the Women of Bosnia-Herzegovina*. Sarajevo: Center for Investigation and Documentation of the Association of Former Prison Inmates of Bosnia-Herzegovina. 2000.



"Karaman's House," a location where women were tortured and raped near Foča, Bosnia-Herzegovina (photograph provided courtesy of the ICTY)

During our therapy work, we met impressive sensitivity and ability of husbands to accept their wives, war rape survivors, because they themselves survived concentration camps or prison torture.

vivors, because they themselves survived concentration camps or prison torture. This mutual understanding and support is missing in civil rape, where survivors face accusation, prejudice and lack of understanding and support in the community. We conducted research on 104 male prisoners released from Šljivovica and Mitrovo Polje, a concentration camp on the eastern Bosnian border. We asked them about forms of abuse, and on the question of sexual abuse they didn't respond openly – 40 percent of them leave this answer blank. We concluded from the data that we need more research on this issue.

"I wish that he would undergo the same like me." These are the words of a 30-year-old war rape survivor, referring to the perpetrator and expressing her call for justice. One judge remarked, "This is a call for revenge." But it's interesting to compare how people from other professions and lay people see justice. It's a similar amount of some difficult experience; it's not the same, but it is a similar amount. The criminal law in Bosnia gives a sentence of six months to two years for the attempt of incest. We have one client who is

a survivor of incest by her grandfather, who just now got a sentence of six months. When we see the consequences – long-lasting, lifelong consequences – we really can discuss the weight of the experience and the weight of sentence.

This client was involved in an alternative court in New York, along with three other clients from Medica Zenica. The client got the decision about compensation on her suffering for the war rape she survived. She gave birth to the child, married a Bosnian man, and now has two sons from her marriage. Her dream is to return to Bosnia upon receiving the compensation and buy a house and live a normal life.

Several victims were exposed to grotesque forms of sexual torture; I will mention only two. One was that one woman was forced to sexually abuse another woman by putting a steel stripe in her genitals. This woman attempted suicide in the river Drina on the eastern Bosnian border. She wasn't successful in taking her life, but later fell ill from a serious kidney illness and died in our center. Her two children were connected with us for a long time, and these girls now attend high school.

When we look at this situation, the victim was forced to become a perpetrator, and this is a form of torture. The consequences were not psychological, but became psychosomatic and medical. This client died.

The other form of sexual torture was that one client was forced to suffer from the insertion of a gun anally during rape. In our work, we call this additional humiliation method, the attempt to excommunicate the war rape survivor from her community.

A 30-year-old war rape survivor, who saw the massacred body of her husband, was taken to the schoolroom in northern Bosnia where Bosnian men from her village were captured after being repeatedly raped. After the rapes, the woman was usually returned to the room where women were settled, but this time she was taken to the room where the Bosnian men were. Armed perpetrators ordered each Bosnian man to beat her, telling them to say nasty things about her. One old man from the village said, "I will not make it, I know what kind of a person is our ..." – and he said the name of the survivor. The whole procedure stopped and the perpetrators took her back to the

room where women and children were imprisoned. Why is this important when you work with trauma survivors? For this reaction, which is one among a thousand, it is worth keeping faith in humanity, in people's humanity.

From the Bosnian situation, we have come to some recommendations regarding witnessing. There are many risks. One of the fears of witnessing is the attack by the perpetrator on oneself or on family members. There is a lack of safety, protection, psychological support, financial support, legal support in the form of legal advice, representation, advisor, attorney and lack of basic human rights. Re-traumatization and fear of emotional breakdown during the trial are also risks of witnessing.

I will comment further on lack on safety because of the new laws on witness protection in Bosnia. There are four categories of witnesses: endangered witness, heavily traumatized witness, witness under threat and protected witness. A protected witness is protected only in the courtroom. There are no police measures that guarantee safety in everyday life and after the court proceedings. And the same is true when the cases from the ICTY are transmitted to the Bosnia state court.

We started advocacy work to achieve status for civil victims of the war and for survivors of war rape. The possibility to get status for civil victims of the war was regulated by the law on social protection in Bosnia and Herzegovina in 1998. But it wasn't clear if war rape survivors were clearly included in one of the categories.

Now, the Bosnian parliament has accepted the remarks and they are included. It is predicted that from January of 2006, if government will have enough money, they will get compensation. The amount of the compensation according to status of civil victims of the war is \$107. It was less, around \$15 in 1998. It is foreseen that compensation would be sought in independent citizens' trials. In Bosnia on some occasions in the roundtables where we met on the issue of war rape survivors, only one senior attorney voluntarily agreed to write the request for compensation. There are no cases on compensation yet in Bosnia, and I guess in other countries this is very similar.

We also need improvement of witness protection law and a clear procedure to assess the working

ability of the war rape survivors because they are damaged physically and psychologically. We also need to amend Article 54 of Bosnian law on social protection, as it addresses only physical damage, while it is important to also assess psychological damage.

Furthermore, we recommend that religious leaders and traditional healers in Africa and other countries heed the example in Bosnia in 1992, in which a religious leader issued a fatwa which proclaimed to men in the Bosnian community that war rape survivors are not guilty and that children born out of rape are equal members of the Islamic community. They used this in Kosovo. We provided education in Kosovo, tried to mobilize the community because we know local, national and international leaders and religious leaders are very influential. We can mobilize the community and raise awareness.

Thank you very much.

Demands for Accountability

- Provide reparations to civil victims of war and survivors of war rape.
- Improve witness protection law and amend Bosnian law on social protection to acknowledge psychological, in addition to physical, damage of war rape survivors.
- View war rape survivors and children born out of rape as equal members of society.

Tang Kim, Cambodia (by video)

Tang Kim was 23 years old in 1976 when the Khmer Rouge defeated the U.S.-backed Lon Nol government and a new reign of terror was unleashed in Cambodia. She was brutally raped by a group of soldiers. Kim broke her silence 28 years after this event, in the film, *The Khmer Rouge Rice Fields, A Story of Rape Survivor Tang Kim by Rachana Phat*. She is the first Cambodian woman to speak publicly about the crimes of rape that occurred during the reign of the Khmer Rouge. The video excerpts appeared before the court courtesy of the director and producer, Youk Chhang, and the Documentary Center of Cambodia.

“Village Rice Harvest”

The evacuation began in 1975. First, they told us to build shelters. But when we were cutting trees for houses, they said, “Stop cutting the trees! Those who have worked as soldiers must live apart from the others.”

Three days after they took my husband, they came to take me. The Khmer Rouge soldiers said, “Your husband now has a suitable place to live. He wants us to take you to live with him.”

But they took me to an area where they kept people before executing them. Soldiers guarded the place, but they were not in uniform. They wore

shorts and carried torches. When one of them asked me where I was going, I replied, “I’m not sure; we are just following orders.”

He said, “Why don’t you go in there,” and pointed to the hall where they kept people. Then we all went in and put our things down. After that, they started making revolutionary propaganda: “Angkar will not kill people; otherwise we would not have evacuated them. Angkar is only taking people for re-education in order for them to work harder to develop and protect our country.”¹²

We were divided near the place of execution, one woman per soldier. They said, “Let’s each take one and do whatever we want with her!”

A soldier took me and had me sit on a dike ... and began talking to me. The other women were being beaten and they all started to run screaming across the rice field. “What are they doing?” I asked.

He responded, “Don’t you know? You were sent here to be killed.”

I was shocked. I pulled his arms and legs, begging him to set me free. After a while, it was quiet and they came for me. One of them asked, “Any left?”

A soldier grabbed my collar and pulled me up. He said, “Ah, we still have one more.” He pulled me around and asked the soldier [guarding me], “Did you get your work done?”

He answered, “I have already finished my work.” But in fact, he had not touched me. I was given to this soldier, but he did not rape me. He was just talking with me.

Then the rest of the soldiers, who had already raped and killed the other women, raped me. They pulled me away like animals tearing at their prey. The first soldier did not dare help me. He only stood still, waiting for the right moment to help me.

After the soldiers raped me, I was naked. They took my clothes, but the head soldier told them to return the clothes to me. I was bleeding after the rape. Three Khmer Rouge soldiers had raped me. [Later] villagers who came to visit said those soldiers were dead.

My husband never treated me that way. We just

IN FOCUS: Cambodia

A French territory for 90 years, Cambodia gained its full independence in 1953. In 1975, following years of guerilla-related warfare, Pol Pot and his communist party, the Khmer Rouge, took over the country. City dwellers were forced into rural areas to carry out slave labor in the Khmer Rouge’s pursuit of a peasant, rural utopia. More than 1.7 million people died because of starvation and torture. The invasion of Vietnamese forces in late 1978 forced the Khmer Rouge into hiding, but war ensued and Vietnam did not end their occupation until 1989. The 1991 Paris Peace Accords called for democratic elections, which were realized under U.N. sponsorship two years later. Many Khmer Rouge soldiers surrendered in 1994 as the result of a government amnesty, but many leaders did not.

12. Angkar means “revolutionary organization.”

slept together like brother and sister. But those soldiers raped me so violently that my bleeding was profuse. You wouldn't know what it's like unless you experienced it. Listeners can only imagine it. To fear so much, knowing your own death was coming.

You wouldn't know what it's like unless you experienced it. Listeners can only imagine it. To fear so much, knowing your own death was coming.

I was terrified to see people being killed off and buried one by one. I saw a Khmer Rouge soldier slashing a pregnant woman's abdomen. They cut it open and took out the fetus. She was one of the eight women they took to kill. I was the only one who escaped. They raped all of those who were sent to be killed. They would never rape a woman otherwise.

You [the filmmaker] have said you were looking for people who committed moral offenses with Khmer Rouge soldiers, but you could not find such a case. The Khmer Rouge would never do anything like that; both the rapist and victim would be executed if it was found out. So, they would only rape those who were condemned to die.

... they would only rape those who were condemned to die.

"Rice Field"

After taking me, they grabbed me violently. It was as if you were to pull one hand in one direction and one hand in the other. We were screaming when they were beating and kicking us. When we fell over, they would pull us back up. They continued for as long as they wanted, then they pulled our clothes off and raped us to their desire. When they finished raping the other women, they killed them.

The soldiers went to see their friend cut open the pregnant woman's abdomen, but left the first soldier to guard me. They said, "Guard this lady! We're just going to complete a task."



Photo of a victim at Tuol Sleng Genocide Museum in Cambodia

Then they all went away. I knew that I was next and had to escape. I lied to the soldier, telling him I wanted to pee. As soon as he allowed me to go, I ran west. I did not know I was heading to a mountain until morning. While running, I changed directions from west to east and came across the soldier who was guarding me. I asked for his permission again, "I can still leave?"

He replied, "You can leave!"

I began running very fast, first on the land, then through water. When the water reached my neck, I had to stay where I was. Immediately the soldiers came back toward me. I heard one of them ask the soldier who had helped me, "Where is the lady?"

He pretended not to know. "Which one?"

One soldier replied, "The one I told you to guard!"

The helpful soldier said, "I have already killed her and buried her with another corpse."

The first soldier continued, "No, I don't believe you!"

"If you don't believe me, I'll dig up the corpse," the helpful one replied.

The other one said, "No need to dig it up. But I believe she is still alive."

Immediately, another soldier announced, "I thought

there were fish jumping. She must be in the swamp. We have to find her.”

Many soldiers were standing around the swamp. I couldn't get out. One of them shone a torch toward me. ... I could only raise my hands and pray. I was so scared. If he had moved one more pace, he would have stepped on me. I kept on praying for my parents and God to help me – for anyone to help me.

One soldier would leave, and another would come, but they didn't find me. Then leeches bit me. I cried out in pain; I couldn't control myself. One of the soldiers heard me shouting and said, “See! What I have said is true. You cannot run away from us.”

I covered my mouth with my hand to keep from crying out when more leeches bit me. I dared not leave because I was afraid the soldiers would find me. I did not know where I was, so I just stayed there.

While I was hiding, I saw many people being executed. I saw people being killed continuously. In one grave they had buried 18 families; in another, 15. People were killed every day. Three days after they stopped looking for me, I came out. I ran back and saw my mother carrying water.

“Photo of Tang Kim, 1979”

When I arrived in Kampong Chhnang, I decided to seek revenge against the Khmer Rouge soldiers. I was suffering so much. No one had ever inflicted such pain on me before. The Khmer Rouge raped me. I was so offended that I didn't want to live anymore. So I volunteered to join the army. But people there said, “You are too small; you cannot even carry a rifle.”

I met my second husband in 1980. I had come to bid farewell to my brother when he went to fight the Khmer Rouge. We called it “wiping it clean.”

I left my second husband in 1984 and gave birth to twins at my sister's house. He never came to see us. My son never knew his father. My second husband had worshiped at the pagoda and asked the monk there to give blessings at his house without realizing the monk was his son.

Blood must be paid in blood. I do not want to take revenge on the perpetrators' families. What about

me? They took my first husband to be killed. Then they took me; they raped me. Did they care about me?

I've suffered differently from others. Being moved from place to place does not mean that life is miserable. I have already described what I mean by a miserable life. I want to ask: They killed my husband, what can they pay? They also brought me to be killed. If I was not able to escape, I'd have died. How can they pay me back? Can they bring back my husband's life? What about my younger

How can they pay me back? Can they bring back my husband's life? What about my younger brother-in-law, elder brother-in-law and mother-in-law? Can they bring back those lives?

brother-in-law, elder brother-in-law and mother-in-law? Can they bring back those lives? Whole families were killed. If you cannot pay back those lives, why did you take them? Why didn't you think carefully? You love your life; didn't they value their lives as well? They ate every day because they wanted to stay alive.

Some people stole and robbed. Why do you think they did? They just wanted to survive. But you killed them. What do you think about that? Did you want to be the only person living while letting others perish? Does it make you happy when every one is dead? What kind of policy did you have? Did you capture people like fish in a trap, picking them about to be killed?

I've tried to forget. But when I remember, I want compensation; I need it for my dignity and reputation. I don't want to remember my past, since no one will be able to compensate me for my losses. I think it is better if I don't reveal my story. That way, people will not know who I am and I will feel more at peace.

When people see a robbery taking place at a gold shop, it might be shocking, but no one will dare step in to help. Imagine if you were in the hands of a group of rapists. No one will take the chance to help you. Even policemen will not come to your aid. So, who is there left to help you? Suppose I

were to ask you, "Please, help me," but you hit me instead. Who was I supposed to seek help from?

I wonder how both sides can reconcile if one side is the victim and the other is the perpetrator? And the perpetrators have not accepted their mistakes. *If* they admit their actions, it would be up to me to forgive them or not. It depends on how they confess. I almost died, but they have only compensated my loss with the word "sorry." The fact that I haven't killed them means I have already forgiven them.

Katrina Anderson, on Cambodia



Katrina Anderson is a fellow at the War Crimes Research Office at American University Washington College of Law. She has served as a legal advisor to the Documentation Center of Cambodia and continues to assist Cambodian researchers to develop a plan to address crimes against women perpetrated by the Khmer Rouge regime.

Good afternoon. My name is Katrina Anderson and I am a legal advisor for the Documentation Center of Cambodia. I am really honored to be here today. I will do my best to communicate the efforts that some of my Cambodian colleagues have done to document some of the crimes that you just witnessed in Tang Kim's description.

I want to just say a few more words about her case because it is so remarkable. Tang Kim is the only woman, the only Cambodian woman, to come forward and speak publicly about the rape that happened to her under the Khmer Rouge regime. The events that she described took place in 1976, shortly after the Khmer Rouge rose to power. She had just turned 23 years old. A few days earlier, her husband had been taken away by the Khmer Rouge army. She did not yet know that he had been killed. This is when her narrative in the film begins.

After her rape she disguised herself and went to live in another village where she would remain unknown for several years. When the regime finally fell in 1979, she tried to join the army so she could take revenge on her perpetrators. She was rejected and became a military nurse instead. She eventually returned to her sister's village and became a farmer, where she struggled for many years to make a living.

During the course of making this film, she decided to leave the village life, which had been so hard on her for such a long period of time, and decided to join the monastery and become a nun. She has refused to speak publicly about these events since the time of making this film. I think what

She has refused to speak publicly about these events since the time of making this film.

makes her story truly remarkable is the fact that she was actually alive to tell it. I'd like to give you some context for this film so that you have a better understanding of what happened to women under the Khmer Rouge and explain to you why stories like hers are only being heard now.

The Khmer Rouge was a Maoist rebel force that overthrew the American-backed and highly corrupt government of Cambodia in 1975. The Khmer Rouge stayed in power until it was overthrown by a Vietnamese invasion in 1979. Its goal was to create a pure Khmer nation that was untainted by class or foreign enemies. Its method for accomplishing this was total revolution, which meant restructuring Cambodia economically and socially to become an agrarian state, and it also meant purging the nation of its enemies. The total revolution quickly became one of the century's worst genocides. Historians differ on the number of victims, but most place the tally at at least 1.5 million dead, or 20 percent of the population.

The killings and other abuses happened in two ways. First, there was forced labor and starvation in work camps. The Khmer Rouge emptied the cities and forced people to work on farms. Many died as a result of starvation, disease, overwork or were executed for failing to work for the revolution.

Secondly, there was direct execution of the Khmer Rouge's enemies, and enemies were considered anyone who was threatening to the new social order. There were four main targeted groups: members of the former political regime, the educated class including teachers and professionals, ethnic minorities and religious communities.

The revolution was controlled by the Angkar, which is what Tang Kim referred to in the movie. The



A pre-trial hearing of the Extraordinary Chambers in the Courts of Cambodia (photograph provided courtesy of the ECCC)

Angkar meant "revolutionary organization." It had a standing committee of seven people, including Pol Pot, and the country was divided into several zones which were further divided into smaller administrative units. The Angkar had total control over civilian life. However, there is widespread debate over how much control was actually centralized, and this has major implications for the upcoming Khmer Rouge tribunal.

The international community was extremely slow to respond to the Khmer Rouge atrocities due to the secrecy of the regime and the politics surrounding the Vietnam War. Peace agreements were finally signed in 1991, the U.N.-monitored elections held in 1993, and the Khmer Rouge was outlawed finally in 1994. No mention of accountability for the Khmer Rouge crimes was discussed until 1997, when the Cambodian government invited the United Nations to assist it in bringing the Khmer Rouge to justice. The United Nations subsequently sent a group of experts to review the options for accountability in Cambodia.

The group of experts concluded that the Cambodian legal system was too corrupt and under-equipped to conduct fair trials and they recommended establishing a fully international trial similar to the ad hoc tribunals for Rwanda and Yugoslavia. This option was immediately rejected by the Cambodian government. Negotiations then stalled until 1999, when the U.N. Secretariat proposed creating a hybrid tribunal that combined Cambodian and international law.

An agreement between the Cambodian government and the United Nations was finally signed in 2004, creating what is called the Extraordinary

Chambers, or Khmer Rouge tribunal. And as I said, it's a hybrid tribunal created within the Cambodian court system but with the assistance of the United Nations. It has a majority of Cambodian judges, some international judges as well, and applies mostly Cambodian law with international law as a gap-filler.

There are many problems with the structure of the Khmer Rouge tribunal – it's quite controversial as many of you may have heard – and also with the mandate of the tribunal, which is only to prosecute senior leaders and those most responsible for the killings. But I'd like to discuss those limitations of the tribunal in more depth tomorrow¹³ and return again to the issue of crimes of sexualized violence under the Khmer Rouge.

While Cambodians are now beginning the long process of dealing with their country's genocidal past, gender-based crimes have remained almost

While Cambodians are now beginning the long process of dealing with their country's genocidal past, gender-based crimes have remained almost completely buried. Many people therefore assume that gender-based crimes were not part of the Cambodian genocide ...

completely buried. Many people therefore assume that gender-based crimes were not part of the Cambodian genocide, at least not on the scale that we have seen in other places, such as Bosnia and Rwanda. The Documentation Center on Cambodia, or DC-Cam, has recently conducted research that challenges this assumption.

DC-Cam began documenting crimes against women a few years ago, although as of yet, there has been no comprehensive documentation effort of these crimes, only small teams of researchers working in two or three provinces, largely due to resource limitations.

The main challenges that the researchers also face is building trust with the survivors. The researchers had to return multiple times before

women would begin to reveal their stories. It took Tang Kim about seven or eight times of meeting with the same researcher before she would begin to open up. Even after that period of time, most women described crimes as those that had happened to other people even when it was clear by the level of detail that they had been personally victimized.

I would like to suggest several reasons why these sexualized crimes have not been investigated in the context of the Cambodian genocide. I will focus on the crime of rape, although there were also several other crimes of sexual violence that occurred under the regime, notably, forced marriage, sexual humiliation, parading women around naked as a form of punishment, torture involving inserting bugs into female genitalia and things like that. The three main reasons why I believe these crimes have not been investigated are: one, the lack of physical evidence of rape; two, the Khmer Rouge's strict policy that actually forbade rape; and three, the forced silence of victims.

Lack of Physical Evidence

First on the issue of the lack of physical evidence: When the world was finally able to access the country in 1979, it had been shut off for several years. Once the regime fell, the world was shocked to find such widespread evidence of genocide and torture, most visibly the mass graves and the torture chambers left behind by the regime. It appeared at the time to many observers that the Khmer Rouge had not discriminated in its killing, as victims constituted every sector of the Cambodian society. The distinctions between victims were further blurred by the fact that skeletal remains did not reveal evidence of gender-based crimes.

Khmer Rouge Policy against Rape

The second reason is that the Khmer Rouge actually had a strict policy that regulated sexuality, and this was part of its quest to create a pure Khmer nation. The policy was less about controlling morality and more about increasing efficiency, because sex was perceived as subversive and threatened to distract people from working toward the regime's goal of total revolution. The regime prohibited sexual relations outside of marriage altogether, and transgressors were punished with death – and even marriage had to get pre-approval by the authorities.

13. Anderson's statement on the limits of tribunals can be found in Chapter III.

While this policy actually worked to protect some women against violations such as rape, the policy harmed many more women by driving the practices underground. The policy translated into the practice of soldiers raping women and killing them immediately afterward in order to cover up their crimes. Remember the quotation in the film when Tang Kim said that the soldiers raped all the women who were already condemned to die. Even if women did survive following a rape, they never reported it for fear that they too would be blamed for the transgression and killed.

The policy also made it impossible for soldiers to rape women in the main torture centers where soldiers were constantly monitored by senior officers. Research reveals that women instead were raped in remote prisons where senior officers rarely ventured and where lower level soldiers maintained complete control. In effect, rape happened where the rapes were easiest to hide.

Forced Silence of the Victims

Third, and finally, evidence of rape was buried because survivors could not or would not talk about their experiences. Many experienced severe trauma as a result of the experience and did what Tang Kim did, which was to go to live in a cooperative and refuse to show their faces to anyone, much less speak about their experiences. Tang Kim still refers to them as “moral offenses” and does not refer to them as rape.

It was also difficult to separate out rape and other gender-based crimes from the long list of crimes and harms that survivors had suffered under the regime: from near starvation to the execution of family members. Also, the culture of shame regarding rape and other gender-based crimes persisted after the Khmer Rouge and endures today. All of this contributed to a forced silence on the part of victims.

Options for Justice and Reconciliation

These three reasons give rise to the main question posed by survivors and others who seek accountability for these crimes: Since nearly all of the victims of gender-based crimes appear to have died, how is it possible to build a historical record or prosecute those crimes in the absence of physical or testimonial evidence? Moreover, how should we proceed in prosecutions before the Khmer Rouge tribunal?



A Cambodian grandmother and her granddaughter hold ECCC booklets in their hands (photograph provided courtesy of the ECCC)

Since nearly all of the victims of gender-based crimes appear to have died, how is it possible to build a historical record or prosecute those crimes in the absence of physical or testimonial evidence?

As I mentioned, the main limitation of that tribunal is the fact that its mandate provides for prosecutions of only senior leaders. It excludes the possibility of prosecuting lower level officers who perpetrated the rape and other sexual violence. And moreover, the policy forbidding rape will make it very difficult to prove command responsibility on the part of the top leaders. Due to these challenges, many groups are exploring non-prosecutorial means of addressing gender-based violence and, in particular, rape.

I submit that many more of these programs need to be explored. Some of the ones currently being developed are using radio programs to address these themes in rural areas. Also, publications are being disseminated within nongovernmental organizations (NGOs) and at the village level. And additionally, this film is one of the creative approaches of the Documentation Center, the leading NGO that's been involved in documenting and archiving all the atrocities of the Khmer Rouge.

This film has the potential to be used as a reconciliation tool. First of all, it creates a historical record of the crimes, which is important because

these crimes occurred more than 30 years ago and many victims are aging and dying. The film can preserve their stories. The Documentation Center is also training volunteers in documentary film techniques so that more of these stories can be told in other regions of Cambodia. It can also be used as a tool for popular education; it's currently being screened in schools and universities, and DC-Cam is developing a curriculum around it to accompany the film, so that teachers and community educators can use it as well.

Finally, it can be a tool for reconciliation, and I mean reconciliation on two levels: individual reconciliation and social reconciliation or community reconciliation. On an individual level, the genre of film helps the victim by allowing her to speak at once publicly and privately. The cultural stigma against speaking out about these crimes is enormous in Cambodia. This format allows Tang Kim to avoid the public shame of speaking out and allows her to be uncensored. She is at times angry and confused, but at all times speaking bluntly and speaking from her heart.

It also avoids the trauma of retelling her story in person. At the end, she said she will not tell her story again; she just wants to live in peace. And as I mentioned, she has refused to speak publicly since the filming of this. This reveals that she thought of the making of the film as a way of finding peace. And, as we know, gender-based

... she thought of the making of the film as a way of finding peace.

violence often creates deep shame which drives women to silence, and the goal of the film is to encourage other women to break the silence surrounding their rape.

It also can inspire community reconciliation. The idea of making the film was to host community forums where the film could be screened, creating a space for communities to confront these issues and allow victims to name their perpetrators – many of whom have been living alongside of them in the same community for years.

The film does not advocate for one road to accountability, but leaves room for communities to devise their own means of addressing rape and

other gender-based crimes as well as encouraging conversations around the broader issues of reconciliation. And, it serves as a way of addressing the legacy of gender-based crimes today. There are a myriad of problems with the Cambodian legal system, but it is perhaps least accessible and most hostile to victims of rape. One of the key goals is to use the film to generate awareness of issues surrounding sexual violence and to push for policy reform that will provide even the most basic protections for victims.

In conclusion, what I would submit to the court is first to recommend that the Khmer Rouge tribunal comprehensively investigate gender-based crimes and, in particular, rape; devote resources to training Cambodian and international lawyers, judges and court officials in investigating these crimes, and this includes using best practices from other tribunals in other situations where rape has been addressed in the context of genocide and war crimes; and also to appoint women as officials before the court. Also, recommendations to the international donor community would be helpful to fund projects such as the film and other creative approaches that document these crimes and serve as tools for popular education.

And, finally, I strongly urge the Cambodian government to adopt a comprehensive transitional justice strategy that not only takes into account the efforts of the Khmer Rouge tribunal – those are important but they are limited – but also to endorse non-prosecutorial reconciliation strategies such as the ones I have discussed earlier.

Thank you very much.

Demands for Accountability

- Comprehensive investigation of gender-based crimes, particularly rape, by the Khmer Rouge tribunal.
- Devotion of resources to train Cambodian and international lawyers, judges and court officials, especially women.
- Support by the international donor community to fund projects to document crimes and produce popular education tools.
- Urge the Cambodian government to adopt a comprehensive transitional justice strategy that endorses non-prosecutorial reconciliation strategies.

ROLE OF HUMANITARIAN ORGANIZATIONS AND MILITARY PEACEKEEPERS DURING AND AFTER CONFLICT

Selmin Caliskan, on Kosovo



Selmin Caliskan works with *Medica Mondiale* in Cologne, Germany as a lobbyist for war-traumatized women and girls from war and post-war regions. She has broad professional experience in cross-cultural projects on the issues of education and health for women and girls, whom she also advises on legal and social issues.

Hello. I'm Selmin Caliskan from *Medica Mondiale*, a German-based organization supporting war-traumatized women in war countries. I will present on the responsibility of humanitarian organizations and individual workers to prevent sexualized violence against women in or during conflict and

IN FOCUS: Kosovo

Kosovo, a province in Serbia, has a large ethnic Albanian population that has been striving for independence from the government in Belgrade for decades. An unsuccessful non-violent movement for independence led by Ibrahim Rugova in the 1990s failed, and violent conflict between the armed Albanian separatist group, the Kosovo Liberation Army, and Serb forces ensued in the late 1990s. Forces of the North Atlantic Treaty Organization (NATO) intervened in 1999 as Serb President Slobodan Milošević implemented a policy of ethnically cleansing Albanians from the province; NATO defeated the Serbs and the province was placed under an interim U.N. administration.

natural disaster – a topic that came up for us up with the tsunami at the beginning of the year.

On the international level, there exist a lot of gender mainstreaming programs and also gender guidelines. But we often as an organization working in these countries experience that it seems to be very difficult to implement these guidelines into the daily working process. In Kosovo, for example, we interviewed several local and international NGOs and most of them told us that there have been no survivors of sexual and gender-based violence among their clients. This was really very astonishing to us.

Although the United Nations High Commissioner for Refugees, for example, has released some very helpful guidelines regarding sexual and gender-based violence in refugee camps, it is obvious that there is still a lack of knowledge and awareness in the practical humanitarian work of several organizations. During the tsunami catas-

During the tsunami catastrophe, a leader of a German section of one big humanitarian organization told us that right now, at the beginning of the support process, the gender aspect would not be that important. But the fact is that the gender aspects have to be included in every relief work from the very beginning.

trophe, a leader of a German section of one big humanitarian organization told us that right now, at the beginning of the support process, the gender aspect would not be that important. But the fact is that the gender aspects have to be included in every relief work from the very beginning. We know that the humanitarian and emergency aid is often dominated by men. It is important to build up gender-mixed teams and a sufficient percentage of women in leader positions. Local women and girls and refugee women should be included as soon as possible in all planning and decision processes regarding the building up of camps or other projects. The community, and especially women, should actively be involved in the

development of security, referral and documentation procedures.

The community, and especially women, should actively be involved in the development of security, referral and documentation procedures.

In refugee camps, it is very important to implement social and educational activities and other possibilities which help to reconstruct a daily routine, clear responsibilities and traditional practices. Local and international organizations should offer trainings and ongoing supervision programs regarding sexual and gender-based violence and trauma for staff members that directly get into contact with survivors of war and crisis. This can help to prevent vicarious traumatization, burnout and the misuse of power as well.

I have another topic which is linked to this which we are demanding from the humanitarian community in terms of a code of conduct and trainings regarding sexual and gender-based violence and trauma. It has to do with the German soldiers in Kosova – we are working also in Kosova. German soldiers have been abusing women and girls – not only in Kosova, but also in Bosnia and Macedonia – who are coerced into forced prostitution by the local mafia.

We have also cases, documented cases, about girls and the linkage to German KFOR [Kosovo Force] soldiers. Soldiers themselves have called a TV channel after documentation about German soldiers in Kosova, and they are the witnesses that allegations we are putting forth as an organization to the German Defense Ministry are true. And another proof is that we know that German soldiers, upon their return, have themselves tested for HIV, and when they started their turn in Sarajevo, when they were in Bosnia, they asked immediately where the next brothel is. And we know that they also make contracts with hotels regarding women who are forced prostitutes.

Since 2001 we have been constantly demanding an open discussion with the Defense Ministry in Germany about the behavior in this respect of military and civil staff. And the case in Germany is that

nobody of the responsible authorities is confessing that there is such a problem. The defense minister is telling us, “No. German soldiers are not doing this.” So, the issue is shut down. And there is no communication with the Defense Ministry about this topic. In the last letters from the Defense Ministry they told us also not to enhance this issue so much because we could insult the fiancées and the wives of the German soldiers.

Beyond that we want to open up the discussion with them about military and perceptions of masculinity and femininity causing societal inequalities, because if we tolerate sexist behavior we are enforcing the hierarchy between men and women

... if we tolerate sexist behavior we are enforcing the hierarchy between men and women, clearing the path for undemocratic gender structures in post-war societies.

– clearing the path for undemocratic gender structures in post-war societies. We are importing this when we go to these countries, and that makes it even more difficult to address the problem properly because they are escaping this repeatedly.

The Ministry for Family Affairs in Germany has recently released a study on interpersonal violence against men. According to that report, the German military is the only institution in Germany where violence in its gravest forms is considered as normal and legitimate, and that men are experiencing this violence also themselves. We conclude: When violence against men undertaken by men is legitimated, the violence against women is to be considered more than normal from their perspective.

I have a short list about the policies we already have concerning the involvement of U.N. personnel and peacekeeping staff: It's the action plan on trafficking and forced prostitution by the Organization for Security and Co-operation in Europe in 2000. We have the Geneva Convention, and we have since last year the NATO zero-tolerance policy, and nothing has happened to implement it. I think in no country it has happened. We have the German Parliament's expressed will to implement

all measures against trafficking during their stay in Kosova. And we have [U.N. Security Council Resolution] 1325 and the ratification of CEDAW [Convention on the Elimination of All Forms of Discrimination Against Women]. But you know that these are only documents and they have to be implemented and not only lip service.

We demand from the Germans, and not only from the Germans but also from other national governments, the introduction of the code of conduct for military, civil and humanitarian staff which prosecutes sexualized violence against women and girls in the countries of concern. We also think that the people who are going into these interventions have to be trained and sensible in order to prevent more violence against women. So we also demand training, that they introduce training measures.

My third issue has to do with the International Criminal Court (ICC). It's crucial that the ICC implements first of all the Gender Unit and further gender standards in both the Investigation and Witness Units. Often witnesses of sexualized violence are re-traumatized and stigmatized by trauma-insensitive investigation practices which prevent them from witnessing and exposing them to the painful machinery of the justice system. And later, women are getting nothing to ensure their living out of the Victims Trust Fund because the national states are not providing this trust with enough funds. What is the meaning of justice if the war perpetrators are treated better in jail, especially in terms of medical treatment for HIV, than the women who have been raped and traumatized and, in spite of this trauma, have the unimaginable courage and staying power to undergo the trauma-insensitive procedures of this jurisprudence system to bear witness to the ICC and tribunals?

It is essential that war crimes against women are not concealed during peace processes. I think it's a very difficult point because they intend not to hinder the reconciliation process in concealing

If they are traumatized and the perpetrators are not punished, how can women reconcile within their own society and gain confidence that this will never ever happen again to them?



Justice Goldstone poses a question to Selmin Caliskan

the crimes committed against women, as you also know. How can reconciliation happen if the crimes against women are not being talked about? Women represent more than half of their societies and are crucial for the reconstruction period in their countries. If they are traumatized and the perpetrators are not punished, how can women reconcile within their own society and gain confidence that this will never ever happen again to them?

This used to happen all over the world, and I give a short example, maybe astonishing to you. Also in Germany, women have not been talking for 50 years about the rapes which were committed by the soldiers of the German military in the occupied countries during World War II and also by the Allied Forces later when they came in 1945 to free Germany from the Nazi terror. This has to do with the fact that they know, that the Germans know, that they brought so much suffering for large groups of people all over the world.

And we want to contribute to a reconciliation process in Germany, raising awareness for the rapes of all groups of women as a common experience. And we are now in year 60 after World War II, as you know. And this group is consisting of Jewish women, German-Jewish women also from other nations, Roma and Sinti women, communist women, women in countries of German military occupation and German women. We launched a campaign this year, in year 60 after World War II, in Germany. It's called "Time to Speak," and we're trying to give space and voice to this part of German history and demand from policymakers that they take their own painful and traumatizing history, their own family history, into account while making decisions today concerning war rape survivors in other countries.

Thank you.

Bensouda: I have one or two questions. In your presentation you briefly touched about the involvement of U.N. personnel. You did not elaborate, so I did not quite get the point.

Caliskan: You mean Kosova? It has to do with the fact that maybe we have to define war rape on a different term from now on. I think this war rape has become a systematic part of all the machinery of war. It's the consequence of the war rape that women in post-war countries are trafficked, and also soldiers and humanitarian aid workers, even people who are working for human rights organizations, are going to these women and abusing them. In Kosova we know that Germans are involved and so we tried, because we are based in Germany, to urge the Defense Ministry to introduce a code of conduct, a punishment for the soldiers and also trainings. But it's impossible to do that, to talk about, to raise this point.

Goldstone: Isn't it important to distinguish between different kinds of gender violence? It seems to me from my own experience in investigating war crimes in Rwanda and in the former Yugoslavia, the one is where systematic mass rape is used on the orders of commanders as a means of demeaning and bringing shame for whatever reason. The cleansing is part of the genocidal plan. That's a structural command situation. I think what you're talking about seems to me to be different, and that is soldiers in occupation, soldiers in command of a situation, are operating in a context where they probably regard it as part of their rights, and there isn't sufficient discipline and moral guidance and lawful means to stop it. I mean, I think it's different. Aren't these two different situations that have to be looked at differently?

Caliskan: You are absolutely right. It's different. I only thought from the perspective of the systematic war machinery: The one is war rape, but the other happens in every country where an intervention is started. It happens automatically that the military is constructing in one minute to the other minute a lot of brothels where the soldiers are positioned, as you know also. And so I thought it could be one kind of war rape because it's so systematic that this happens. But, it's different.

Judges: Thank you.

Demands for Accountability

- Implementation of a code of conduct for military, civil and humanitarian staff which prosecutes sexualized violence against women and girls.
- Implementation of a Gender Unit by the ICC, and gender standards in both investigation and witness units.
- Maintenance of victims' trust and reparations funds.

STATE ACTORS AS PERPETRATORS: RAPE, DENIAL OF RIGHTS, INTERNALLY DISPLACED PERSONS

Rape Survivors, Nigeria

Testimonies submitted by Women's Aid Collective of Nigeria

IN FOCUS: Niger Delta in 1999

The events described in this section took place in 1999 in the Niger Delta region of Nigeria. During one episode of the long conflict over oil production in the region – between the government of Nigeria, rebels and multinational corporations – then President Olusegun Obasanjo sent truckloads of soldiers to the delta communities. By the time they arrived, most of the men had disappeared, leaving only the women and children. More than 50 women were raped in the community. Joy Ngozi Ezeilo, founder of the Women's Aid Collective (WACOL), took on the case, which was denied by the federal high court and as of late 2005 was in the appeals process. She noted during the session: "We will go to an international tribunal because we are not likely to get any domestic remedy, but we want to exhaust domestic remedies first." WACOL, an organization dedicated to providing legal aid and support to victims of abuse from around the country, has provided support to the civilians harmed by this classic struggle of distribution of wealth and resources.

Victim, 26 years old

I took my 9-month-old baby with me because the other two would not be able to take care of him. The two were very hungry and would not be able to babysit him. So I backed him and took off for Odi. When I met the two men, I thought they would, for the sake of the baby on my back, allow me to continue. They asked me to put the baby on the ground, but I refused. They did that themselves, and just before him, raped me one after the other while my baby was standing crying. It was like a film, but they did it. I was ashamed of myself. He observed everything, but he was helpless and was crying beside me. I don't know if he understood what happened.

After, I picked my child up, and as both of us were crying they decided to take me to my compound where I picked garri, some yams and fish. They led me through the bush and I was not disturbed by any other person. I was not pregnant, maybe because I was still breastfeeding.

I did not tell my husband; in fact, you are the first person I am telling this. I refused to tell even the Red Cross people. I am confiding in you because you are my fellow woman and I know you will not tell my husband. I wish the government would send doctors to treat us free, for many of us were affected. Odi women want [President Olusegun] Obasanjo to come and see what his men did to us innocent women who never took part in the crisis. We lost our husbands, children and property. We require compensation from the government.

Victim, 45 years old

I am a mother of two children and was three months pregnant during the military attack. My children were hungry, so I decided to go home to get some food. On my way home, I sighted the soldiers and immediately started to run. They ordered me to stop or they would shoot me. I knelt down and urinated on my clothes out of fear. At this juncture, one of them ordered me to close my eyes, which I did. As I was about to say, "Please," (not knowing their intention), that same soldier slapped me and ordered me to close my mouth.

The next thing I heard was, "Come on, lie down

IN FOCUS: Nigeria

Inter-communal conflicts between ethnic tribes have claimed the lives of thousands of Nigerians and rendered a national atmosphere of distrust and fear. But trumping ethnic and politically based conflicts which are current in other areas of Nigeria is the struggle over resource distribution in the oil-rich Niger Delta region. Massive oil reserves could secure the economic future of the nation, but instead disputes over the valuable resource have spurred years of violence and lessened productivity as armed militants have demanded a fair share of the valuable revenues. Popular media has reported on kidnappings of foreign oil officials, but remained largely silent on the plight of impoverished locals, who have suffered the brunt of the violence.

and open your legs.” That I did without delay. One of the three men said, “She is pregnant.” Another told them that it did not matter. Thereafter they started to gang-rape me. As they were raping me, I was in excruciating pain because they had their whole body on me. It was a terrible experience. Instantly I experienced waist pain, which culminated into bleeding two days later, leading to the climax of my loss of the pregnancy. I was rushed to a woman who assisted in treating me with herbal medicine.

The loss of the pregnancy has left an indelible sadness in me because I had been looking forward to the pregnancy for many years. I am still sick and have not been myself ever since then. Moreover, after the gang rape, I returned home only to find my matrimonial house burnt down. My family and I don't have anything now. We had little assistance from the Red Cross, which visited initially. I don't know those who raped me, but I know they are men in army uniform and are Nigerians. Please, they should be punished and the government should pay for all that we lost.

Victim, 40 years old

When we were running away from the military attack, I took all my children with some food items in our small family canoe. In the middle of the river we had problem and our canoe capsized. Three of my children died instantly in the river and three came out alive. I also lost the entire foodstuff along with our clothes. After some days, I went with one of my children to collect some foodstuff from home.

As we got to our house, we met two soldiers with guns. They said that they had come to complete their assignment. I told them that I did not know what they were talking about. Immediately one of them slapped me and ordered me not to talk while they are talking. They took my child to the inner room and locked him up there. They forced me down and raped me. But after the first one, I started vomiting, so the second person could no longer rape me but kicked me with his boot.

Since then I have severe waist pain and I don't sleep at night as a result of the pain. Psychologically, the shock and trauma are still in me. Culturally, I feel ashamed of myself in that it is an abomination in my community for a married woman to have sex with another man. I cannot identify the military rapists because they ordered me not to

Culturally, I feel ashamed of myself in that it is an abomination in my community for a married woman to have sex with another man.

look at their faces. Please, tell the federal government to pay for our lost items and build houses for us because they sent the soldiers to go and maltreat innocent women and children.

Thank you very much for this interview because I had never had the courage to discuss this matter with anybody. I don't want you to discuss the facts of this incident with anybody because the rape constitutes an abomination in our land.

Victim, 25 years old

My two children (aged 4 years and 1 year) were crying for food in the bush where we were hiding and I had nothing to give to them. When I insisted I must go and get food at home, my husband told me to go with my two children. We had walked for some distance when two soldiers came from behind and stopped us. After some interrogations, I told them I was going to my house to get food for my children. They were furious and ordered me not to talk to them, threatening to teach me a lesson. So they took my cloth and put the baby on my back down. My children started crying but it did not stop them from raping me.

These wicked soldiers, after torturing me, raped me one after the other in the presence of my two children. They simply reduced me to an animal. I felt so humiliated that I did not want to see my children after that, but had nothing to do other than to take them to my house and still bring food for them. The incident has left a lasting trauma in me. As long as I live and my children live, I will never forget the bizarre experience. My husband even accused me of deliberately wanting the soldiers to have sex with me.

Victim, 60 years old

When the military came to Odi, I could not carry all my things away because I have no canoe. I only took things I could carry on my head, along with my grandchild, and ran to the bush. After three days, the food I had was finished and I had no other choice than to go and get food from my house. I am old and I felt the army would have

nothing to do with me since they were only looking for the men and the youths of the community. When I met them, they were very sad and asked me about my sons and husband. I told them that I didn't know where they were and that I only had my grandchildren with me.

One of them held my wrapper and when I told him that I was old enough to be his mother, he slapped me, took away my clothes and pushed me down while the other man held my hands. The man on top of me told me that he would show me that I was not yet old. He went ahead to rape me and thereafter the other soldier followed suit. I saw stars and almost lost my breath because of the size of these men.

After, I could not get up from the floor; they held me up and asked me to run away. But I could not stand. I noticed that I was bleeding and my two legs were shaking. I have never heard nor seen this kind of thing in my life before: two men raping an old woman of 60 years.

Since then my menses that had stopped for a long time comes up irregularly. Ever since then, I have been very sick and experience excruciating waist pain; I equally experience fainting attack on a frequent basis, including nervous shock. Moreover, I lost all my material possessions, including my house, which was burnt down. I find it difficult to go out because I have no clothes. I don't even have money to continue my trading.

Victim, 40 years old

Before the military invasion, we were instructed by the community leaders to run away from our town. So I took my children and a few things I could take in our little canoe and left the town as instructed. But because I had my seven children with me our food could not last for more than one week. So instead of my children dying of hunger, I decided to sneak into the town at night to collect food for my children.

So as I was approaching my house, I saw four men who flashed a torch light on me and ordered me to stop or they would shoot me. So I stopped in fear and trembled. They accused me of being an agent of the youth, which I denied. They said that they would detain me until I produced my own sons. I told them that I have come to take food from my house. They now took me to my house. Then my house was still there and everything in it



The panel hears testimonies of women from Nigeria still as I left it.

They forced me to cook food for them in my house and after eating they told me that they would “use” (that's have sex with) me. I pleaded and pleaded but all in vain. They brought out their guns and were ready to shoot me. One of them then told me to undress, which I did, crying. The first person put his penis in my mouth and poured out his sperm in my mouth and forced me to swallow it, while the

I wept until I could no longer be heard.

other three raped me one after the other. I wept until I could no longer be heard. They later abandoned me in my house and left. I was there for two days, after which I managed to go back to my children.

As a result of the rape incident, I had a sore in my private part, with severe pains in my two legs and waist. I started experiencing irregular menses and my womb hurts me. I also started experiencing internal heat. I confided in my husband because I noticed I was not walking well. I received herbal treatment because we could not afford orthodox medical treatment. I found it difficult to eat whenever I remembered the penis that was penetrated into my mouth. Psychologically, I developed strong aversion for sexual relationships even with my husband. I hated seeing his penis because of my ugly encounter with the four soldiers.

With the war over and the military recalled, I went home to find my house and all that I had gutted by fire. I need medical treatment so as to verify if they

have infected me with HIV/AIDS; I also need some counseling with a view to changing my sexual attitude.

Victim, 36 years old

When the soldiers came, people were running, but I couldn't run because I had no canoe. (The only exit from the town is through the main road, which the soldiers had barricaded, and through the river). I begged people to carry me but it wasn't possible because most of them had families to carry and their canoes were full. I was around until the 22nd, hiding at the back of my house – it's a bushy area. Unfortunately, they found me and were very happy, saying that they've been looking for women and found none, so they said I should get into the house. I obeyed, as I was afraid of them. The first man said I should undress and I told him I was married. His reply was: "*Which kind married woman, no be una husband dey create trouble?*" I said no, that my husband wasn't in town and is not a troublemaker, but they wouldn't listen.

The first soldier raped me, then the second and third despite all my pleadings (even my hand is still aching due to the struggle I had with them). Another group of soldiers came and started shouting, asking: "Where is the lady, where is the lady?" They came into the house and also raped me. I

Altogether six men raped me. I stayed in the bush for five days without food or water ...

couldn't get up and so I stayed on the floor until about midnight when I felt hungry and managed to creep out to cook something to eat.

The third batch of soldiers came and asked what I was still doing there. I explained. Some took pity on me, while others said I was lying – that I was the one who gave birth to all the bad children, but I protested.

After they left, I headed for the bush fearing that if I stayed longer, I'll end up dead. Altogether six men raped me. I stayed in the bush for five days without food or water, until an old woman saw me in the bush and asked if they hadn't left me. I said they had but that if I left the bush again, they would rape me. She said she had some food that

she could give to me, which she did. Another lady also brought food for me. She told me the soldiers were now on shift and once it was morning, they went to town and returned at 1 p.m. She advised I come out during this period because of the possibility of being bitten by a snake in the bush. When I finally came out, she took me to her house.

After some time, the soldiers stopped harassing old women. Sometimes, the soldiers would come threatening that they wanted to search the houses of these old women, but they would say they had nothing and sometimes, to remove suspicion, they would open the doors to them while I hid under the bed. This continued until the soldiers left Odi and the governor recalled all Odi people.

On their return, the Red Cross came and I went to receive treatment there, until my husband came and took me to Port Harcourt for treatment, then I came back. Although I'm not yet strong and healthy again, I have to struggle because this is a village. If you don't work, you don't eat.

Victim, 23 years old

My husband was among the first set of people that the police killed in the crisis. I was at the peak of mourning when we were asked to run away because of military invasion. I left with my only child. When we ran out of food, I heard that women go to get food from their abandoned homes. So I left my child in care of my sister and went in search of food.

When I saw them I thought that what happened to my husband was going to happen to me. I pleaded and told them that I am a widow. They told me that I would not be shot if I obeyed them. Their eyes were very red and they were ready to shoot if I had put up any resistance. So they raped me, two of them, one after the other. I got home, I told my husband and relations, but instead they accused me of enjoying the rape. They sent me packing with my child.

Now I am in my father's home. I take care of my child with the little trading I do. I did not go to the hospital. I went to a female herbalist who treated me with alligator leaves and ginger in an attempt to rid my womb of infection.

Victim, 73 years old (as recounted by victim's daughter, 35 years old)

When the troops came, she said I should leave

her and run away since she was old and couldn't move. According to her, there was no problem if they decide to kill her, rather than my staying with her and dying. So I left her and ran into the bush. After 11 days, I came out and found her on the floor. I thought she was dead, but on coming closer I discovered that she was still alive. She said she hadn't eaten for days and was raped by two men and hence couldn't get up to find food. I guessed the men were looking for women and since they didn't find, they decided to do whatever they liked with the old women they saw. Her waist is painful for her. Although she can now eat and sit without support, she still can't stand on her own.

Victim, 40 years old

On the 20th of November, 1999, when people were running, I had no canoe to run, so I ran into the bush and stayed there. After three days, I was very hungry and came out in search of food. I found a guava tree and started picking the fruits that fell from the tree; it was then that two soldiers saw me. They asked me to tell them where the village boys were hiding and I replied that I did not know. They said I was lying. The leader told his colleagues to kill me.

On hearing his command in Hausa language, I started pleading with them in English to spare my life. He then said in Hausa, "Don't listen to her; just kill her and let us proceed," so I started pleading with them in Hausa. Two other soldiers came to join them, and in the process they handed me over to them and instructed them to take me away.

On our way, they said they wanted to give me a bath, so I started pleading with them again until we got to the village sand field, where both of them raped me despite all my pleadings. While they were raping me, two others came and they invited them over (in Hausa). Hence, I started begging them again in Hausa, telling them that my husband is also a soldier. They asked for his name and where he was, and I told them he was in Bori Camp. They asked where my kids were and I said they were with him, but they didn't believe me and carried me out to the town and handed me over to other soldiers.

The captain among them said they should not touch me but should rather take me to my husband at Bori. They then handed a written note to me and said I should give it to the driver of the car I would board. On board a vehicle, I gave the



Devastation in the Niger Delta after an oil pipeline operated by Shell bursts (photograph provided courtesy of IRIN)

note to the driver of the vehicle who drove me up to Kaima. On reaching there, they put me into another vehicle with six boys that had been caught, beaten and tied. The note I gave the driver was nowhere to be found.

When they saw me, they said: "*Ehem, so woman sef join, today you go see, we hear na una dey cook food for the boys, today you go see*" [which means, "So a woman is even among the gang, we will deal with you decisively; we heard that it is you women who cook for the boys, you will regret your actions today"]. I stared and said nothing. They gave me a small piece of yam with stew and pure water, but I couldn't eat, but drank water. Then we headed for Bori Camp.

On getting there, they called my husband to identify me but he denied me. They told him to take a second look and he said he knew me but that I was his ex-wife. "For how long," they asked, and he said for a long time, yet my last child with him is barely three years old. They then turned to me and said I lied that my husband was at Bori Camp. They started beating me mercilessly, after which they carried me off to the guardroom with the other boys I met in the vehicle, and I stayed there for three days without food.

They then brought me out for my husband to see me, and he said that being that we were no longer together, I should not have come to Bori Camp to see him and that was the reason why he denied knowing me. He then told them to release me. They said they would act on his first statement (that is, that he does not know me) and refused to release me. They took me back to the guardroom. There they stripped the boys naked. When they

wanted to do the same to me, one of the soldiers asked them if they didn't have mothers, so they left me and I stayed in the guardroom for two weeks.

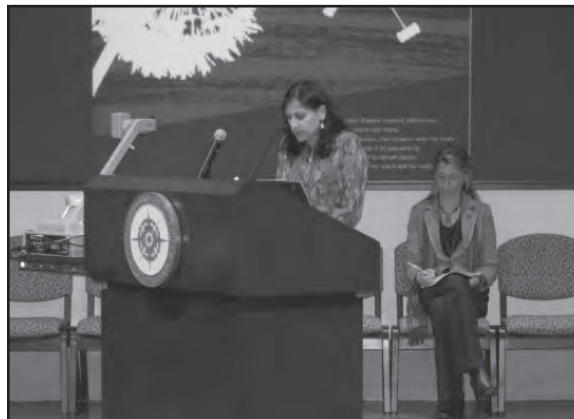
The day they wanted to take the boys to Benin, they brought us out chained in twos. We now walked as they filmed us and said that we didn't have the faintest idea where we were going. A major I knew when my husband and I were at Mongunu in Borno State said that I should be beaten properly. On hearing his command, I turned, called out his name and greeted him. He was shocked and asked how I knew him and I told him. He said it was unfortunate that my husband first made a denial statement and there was nothing I could do, that even if I didn't die I would suffer.

Finally, the day we were billed for the unknown destination, that major pleaded with his fellow majors to release me. We were all ordered to enter the Black Maria.¹⁴ When it was my turn, a major called out to me to come to him. On getting there, he said I was free to go home.

On coming out to the main road, I had no money on me to go home. A female soldier then saw me, took pity on me and gave me 50 naira to get to my destination in Port Harcourt. On arriving at my sister's place at Port Harcourt, she said I wasn't going back until I had fully recovered, so I stayed with her until mid-February when I returned to Odi.

Even now when I take deep breath, my chest and back hurt because of the beating I received. My hands also hurt because of the chain.

Huma Ahmed-Ghosh, on Afghanistan



Huma Ahmed-Ghosh is an assistant professor at San Diego State University and has taught graduate and undergraduate courses in women's studies, anthropology and Asian studies. She has conducted research in Afghanistan on the role of women-run NGOs in the reconstruction of the country.

I would like to thank the Joan B. Kroc Institute for Peace & Justice for organizing this Global Women's Court of Accountability, and especially

IN FOCUS: Afghanistan

Afghanistan has been in a state of conflict for nearly 30 years. Soviet occupation beginning in the late 1970s, their withdrawal in 1992 and subsequent war among rival mujahedeen factions created widespread instability for the Afghan people. In 1996, the Taliban regime took control of the country, imposing a strict interpretation of Islamic law which resulted in the deterioration of human rights and conditions for Afghan women, whose movements were restricted and education denied. In 2001, U.S.-led coalition forces bombed the country, targeting the Taliban after their refusal to hand over Osama bin Laden, held responsible for the September 11 attacks in the U.S. A new president, Hamid Karzai, took office in 2001, and a new constitution went into effect in 2004, leading to the first parliamentary elections in over 30 years in 2005. The Taliban continues to carry out insurgent attacks in the southern and eastern regions of the country against Afghan, coalition and NATO forces.

14. A vehicle used to carry prisoners.

Dr. Dee Aker for her tireless efforts to bring to this city voices of women that one rarely hears in the world where violence against women and denial of human rights have reached unfathomable proportions. It is an honor and a privilege to be here.

Today I will speak from my research in Afghanistan. I am not an Afghan and I have not experienced the abuses that Afghan women have been subjected to through the last few decades. But I am from the region: I am from India and a Muslim by birth, which facilitated my interactions with Afghan women in the country.

In an attempt to not claim the voice of authenticity, I will talk about the implication of the state as actors and perpetrators of torture and gendered violence in Afghanistan – not just the range of Afghan states, but also the implications of Western-controlled states and occupations in Afghanistan that have used Afghan women to rustle their masculinities and patriarchies. Simultaneously, I stand here to remind you that Afghanistan should not be the forgotten nation just because we are preoccupied with Iraq.

The situation in Afghanistan continues to deteriorate, especially for women, and they still need the kind of global attention that was showered on them four years ago. Contemporary Afghanistan pro-

Contemporary Afghanistan provides a good case study for looking at the growing demand for women's rights within a tribal, Islamic and modernizing framework.

vides a good case study for looking at the growing demand for women's rights within a tribal, Islamic and modernizing framework. Here there is a precarious intersection between military interventions, physical and political instability, economic devastation and a degree of lawlessness that renders all Afghans, and especially women's lives and rights, in jeopardy.

Historically, Afghan women have been challenging the use of their bodies by local traditions and to internationally imposed standards by foreign occupiers with little success. I will refer to Afghan



women's bodies as globalized property over which women have limited control. This globalized property has been manipulated by tribal patriarchies, expansionist policies of the communist states, Cold War rivalries of superpowers, symbols for fundamentalist regimes and the Western rhetoric of women's rights – all for the quest for oil pipelines and revenge for 9/11.

What has been clear from my visits to Afghanistan is that the country is still engaged in conflict and the thin veneer of so-called democratic stability. Afghanistan by now has been in active war for 26 years and an end is not in sight. In the 26 years of political instability and war, an estimated 1 million Afghans lost their lives, and almost the same number of people became disabled. Many sources suggest that at least 7 million Afghans were forced to flee their homes, and of them, at least 5 million were international refugees – mainly in Pakistan and Iran – and 75 percent of those refugees were women and children. The total population of Afghanistan today is 28 million.

According to a UNIFEM report, only a quarter of Afghans today have access to clean water, and approximately one-tenth of the population has adequate sanitation. This compounds the incidence of disease, especially tuberculosis. Afghan women have the highest incidence of tuberculosis in the world. In Afghanistan, 90 percent of births take place at home, leading to the second highest maternal mortality in the world. Infant mortality is the highest in the world: 166 deaths to 1,000 live births. Life expectancy has plunged to 42 years for both men and women. Even as literacy rates for men have dropped to 30 percent, for women it has come down to 13 percent.

Trafficking of Afghan women and children is rapidly increasing; this is after we intervened

and brought so-called democratic stability to the region. The numerous reasons for the increase in trafficking can be attributed to the vicious cycle of war, poverty and cultural and political oppression for at least two-and-a-half decades. According to an International Organization for Migration report, forced prostitution and prostitution of minors, forced labor, abductions for forced marriage, for debt relief and the exchange of women for dispute settlement continue to thrive in Afghanistan.

Other atrocities that are on the rise according to the above report are the sexual and domestic servitude of women and children. Most of the women who are subject to such gendered violence are displaced, destitute and indebted persons and families, young people seeking economic opportunities abroad and rural women. By “economic opportunities abroad,” I mean prostitution.

As things stand today, the U.S. commitment to any kind of reconstruction or implementation of human rights and the raising of women’s status is clearly reflected in where the rhetoric is positioned. Since 2002, of a total of approximately \$13 billion, only 9 percent is used for humanitarian aid, 4 percent went to national peacekeeping, while 85 percent of that \$13 billion is being used to fight al-Qaida and the Taliban and to look for Osama bin Laden, who may be long dead, who knows? This is a totally inadequate allotment of resources, given that the biggest problems facing Afghanistan today are of dire forms of poverty and lack of security. This leaves a paltry 2 percent for reconstruction.

According to Human Rights Watch, many women blame the failure of disarmament, the entrenchment of warlords in both regional and central governments and the limited reach of international peacekeeping troops as the reasons why they feel unsafe. According to Suraya Parlita, the head of the All-Afghan Women’s Union and also the founder of the first women’s group in 1964 in Afghanistan, brutal gang rapes and violence continue to keep Afghan women living in fear. She says, “I am against the burqa, but until security is secured completely, I do not think women will take them off.”

A current example of an Afghan woman’s continued subjugation through violence, justified through traditional masculinity and ignored by the West’s masculinist human rights rhetoric, was the reported stoning to death of a 29-year-old Afghan

woman named Amina in Urgu, Badakhshan province. This is not unexpected nor is it atypical.

According to an Afghanistan Independent Human Rights Commission report, the prime suspect in

... the prime suspect in the perpetuation of masculinities tied to the honor of the community are the legal courts.

the perpetuation of masculinities tied to the honor of the community are the legal courts. Especially in rural Afghanistan, most settlements are arrived through decisions by the *jirga* or the *shura*, which are both local political bodies that are controlled entirely by senior men. In formal conversations with many Afghans that I had when I was there, they claim that local bodies controlled 90 percent of the justice system. This, coupled with the continuing power and elevated status of traditional practices and customary law in Afghanistan, almost renders the justice system impenetrable for Afghan women.



Armed men on a tank in Afghanistan after the fall of the Taliban (photograph provided courtesy of IRIN)

An example of a heinous practice that still continues in Afghanistan is *bad*. This is the giving of women and girls to victim families to resolve disputes. Through this exchange, the perpetrator's family recuperates honor. Estimates exist that 25 percent of these transactions involve children. These transactions can occur to resolve issues ranging from murders, elopement, intertribal animosities and land disputes.

In one of the NGOs I visited in Kabul, a young girl of about 12 was sweeping the floor. The person whom I was talking to about the activities of the NGO told me this girl had been rescued two years ago from a brothel in Kabul. She had been given in *bad* to a 48-year-old neighbor in her village. Her parents had accidentally broken the wall that was joining their compounds, and this young girl, who might have been 10 at that time, had been married off to him to make amends. Besides being raped, she was repeatedly beaten by her husband and her parents because she kept running next door to her parents' home. She finally ran away from both homes, was kidnapped and brought to a brothel in Kabul. Now she is living in this NGO and attending school while keeping the place clean.

Similar reports also highlight the increase in domestic violence, deterioration in women's mental health and a rise in suicides by girls and women, especially in cases of forced marriages. Self-immolation is mounting among women and has reached a proportion of national concern. I also met a woman whose right eye was missing. Later I was told that her husband had thrown acid on her face because she had been unable to give birth to a son after three daughters.

The story of another was also quite horrific. She had been married and then was abused physically for the first years of marriage and after that beaten up so badly that she died. The case was taken to the local shura or jirga and the husband was absolved of any crime. It turns out that he had been at war for 20 years and was forced into homosexual acts, and when he came back and was told to get married, he could not deal with all of that trauma he had experienced during war. The only way he knew how to deal with it was to beat his wife until she finally died. So, because of that trauma which I am sure was justified, he was absolved of any responsibility. But these kinds of issues are not given any seriousness or concern in the country.

These are just a few of the blatant examples of continuing manipulations of Afghan masculinities through the perpetuation of violence and subordination of women's bodies. For the West, Afghan women's issues and rights are no longer prioritized nor considered important. Numerous reports from UNIFEM, Amnesty International, Feminist Majority and other U.N. and independent agencies have been listing the atrocities against women in Afghanistan for the last four years, but this has not impacted either foreign policy in the U.S. nor consideration for funding by foreign agencies. I hope this conference organized by the Institute for Peace & Justice will have some bearing on the situation.

Tribal laws and sanctions have taken precedence over Islamic laws in deciding gender roles in the region. I am now talking about the implication of the various state actors in perpetuating gendered violence. [The year] 1979 saw the Soviets occupy Afghanistan. Interestingly, the occupation of Afghanistan was not about competing masculinities of the Soviets and Afghans, but of two Western superpowers, the Soviets and the U.S.A. The two superpowers had been asserting their muscle power in the world through wooing alliances with Third World countries and a race extending from arms and weapons to the moon. The Russians left behind their legacy in the form of landmines. While records do exist of the Russians' insistence on female literacy and employment, it should be noted that this push was also in response to the absence of many young women from the employment sector due to their out-migration or involvement in the war against the Russians.

When the Russians did leave, what we saw in power after that was the mujahedeen. The mujahedeen were a collection of tribal leaders who were united only in their efforts to rid the country of the Soviets. The mujahedeen were referred to as freedom fighters and, specifically with aid from the U.S.A., were playing out the U.S.A.'s Cold War animosities by fighting a communist regime. Washington alone supplied an estimated \$10 billion in arms and aid to these freedom fighters to dethrone the Soviets. As pointed out by a well-known writer on Afghanistan, Norah Niland, the willingness of different commanders to raze much of the capital city and the lawlessness of the mujahedeen who killed, pillaged and raped with abandon, marked a new phase in the war.

Afghan women, especially during the mujahedeen era in the country, were also subjected to rape, torture and kidnapping. Women were expected to be veiled and house-bound on the one hand, but on the other, the unbridled lust of commanders and their troops were responsible for violent rapes. Paradoxically, the U.S.A. turned a blind eye to the atrocities perpetuated by the mujahedeen when they took over and basically only focused on the Taliban – but stories of rape, etc., that occurred

... stories of rape, etc., that occurred during the mujahedeen era still dominate the stories one hears in Afghanistan.

during the mujahedeen era still dominate the stories one hears in Afghanistan.

One of the women I interviewed talked about her neighbor. She said one night she heard screaming from the neighboring apartment and the next morning she found out that the neighbor's daughter had jumped out of the window. She looked away from me and said, "She was only 13. It was her parents who told her to jump because men were banging on the door to take her away to rape her."

Similar stories of sexualized violence exist in contemporary times in Bosnia and in India. Looking at the sexualized forms of torture and human rights violations against women, especially during conflict, begs the discussion on a global and mainly Western stage of masculinities and the control over women through patriarchal sanctions cross-culturally. It is not about this regime here or that regime there; we need to look at it more seriously. My time is running out, and you have already heard enough about the Taliban from the Western press, though of course we forget that the Taliban was also brought in with U.S. support.

To conclude, I just want to make a few statements about these kinds of courts of accountability – that while we hear a lot of testimonies and read a lot of material on the kind of gendered violence we are seeing and experiencing in the world, we have to understand that conflict resolution, reconciliation and prevention cannot begin until a lucid and comprehensive understanding of the gendered politics



Women outside a hospital in Afghanistan
(photograph provided courtesy of IRIN)

that perpetrate and perpetuate violence in the first instance is provided.

Such analysis evokes a sense of urgency given the change in the nature of wars and their victims. In more recent wars, 90 percent of the casualties are civilians and the majority of those civilians are women and children. In every militarized war zone and refugee camp, violence against women is part of a broader continuum of violence that transcends

In every militarized war zone and refugee camp, violence against women is part of a broader continuum of violence that transcends the simple diplomatic dichotomy of war and peace.

the simple diplomatic dichotomy of war and peace. Patriarchy is the structure and ideological system that perpetuates the privileging of masculinity, and this privileged masculinity is the cause for sexualized gender violence which is dominant during wars.

Earlier, Selmin Caliskan was talking about introducing a code of conduct and training of U.N. officials when they go in as peacekeeping forces in response to the rapes that are conducted by them. One of the justices responded by saying that it depends on whether there is systematic rape during war or if it is a moral issue for the person who is committing a rape. But in my mind, all the rapes

that are committed by international peacekeeping forces are war crimes.

The issue here is not how many were raped or how many committed the rape or under what circumstances. It is about rape being a form of gendered violence that is legitimized through certain institutions of masculinity and patriarchy which have to be addressed before we start talking about individual cases and countries and leaders – because unless we open up that debate, the story will never change. Thank you.

Goldstone: I think I must clarify something. You misunderstood me.

Ahmed-Ghosh: Yes, maybe.

Goldstone: The point I was making is that you must draw a distinction between rape used as a form of warfare, where systematic mass rape is adopted as a method by people in command positions on the one hand, and rapes committed by individual peacekeepers because of their own individual criminality. I am not justifying or saying that one is worse; they are all rape. I think they are two different issues and two different problems, and they shouldn't be confused or conflated.

Ahmed-Ghosh: Yes, I understood what you said and I am responding to that again because the point I am trying to make in my presentation is that when the U.N. peacekeeper rapes, it is not because he has a criminal record. It is mainly because he has the power to do that. So we cannot trivialize it by individualizing it. We do not talk about the power dynamics in gendered violence, which is sexualized violence.

When I heard stories in Afghanistan about the mujahadeen cutting off women's breasts and opening pregnant women's stomachs, I was amazed because I read the same stories from Bosnia and from India. So there is a gendering and a sexualizing of the kind of violence that is related to power. And when there is rape during war, like what you said, when there is mass rape, I think The Hague and other U.N. organizations give it more attention not because they are concerned about the women who are raped, but it involves the rape of a certain sense of nationalism. So it is really about the men again, whereas when there is an individual rape, it is seen as a woman's issue and, therefore, not necessarily trivialized, but not given that kind of

importance. So I wanted to bring the whole concept of power and the power dynamic, and how at some level it is really the same thing – it is just that we're viewing it differently because of the contexts.

Ezeilo: But would you agree that also in international law, the normative framework is such that once women speak out they will be able to get justice because the U.N. peacekeepers are bound by a strict code of conduct? I know recently some Nigerian soldiers on peacekeeping missions were not only deported and brought back to Nigeria because of the issue of systematic rape of women in Congo, but they were all dismissed and they are currently facing prosecution in Nigeria for committing crimes against humanity. I think within the context of crimes against humanity, it is not just the gendered crimes as defined in the Rome Statute, but also gendered violence committed in peacetime – so to say, post-conflict reconstruction, not during the conflict – comes within those crimes against humanity.

Ahmed-Ghosh: So you are saying that both are connected, violence and peacetime? Both are crimes against humanity?

Ezeilo: Yes, they are crimes against humanity even when committed during peacetime, during peacekeeping missions.

Ahmed-Ghosh: I know the Nigeria case and that has its own racial dynamic, too, because people say that the Nigerians were sent back to use them as a scapegoat. But in the U.S., we have our own history in the various wars, in Vietnam, in Iraq and all of that, and we can see what happens when the perpetrators come from the U.S.

Ezeilo: In international law, they always tell us that the relationship of sovereignty is like the relationship of a giant and a dwarf. So the U.S. is the superpower, the policeman – not the woman – of the world. That is the issue. Finally, what are your prayers for this court? What do you want the court to do for the women of Afghanistan who you are representing?

Ahmed-Ghosh: I do not know if I want them to do anything for the women of Afghanistan as much as open up the whole human rights discourse and the torture discourse, especially in the recent light of [President George W.] Bush saying that we do not use torture; he redefined torture. I do not want

him redefining human rights. Also, bring in to the Afghanistan situation the implicit interference by the U.S. and the Russians because it is very easy to dismiss the current government as warlords, but the issue is much bigger.

Judges: Thank you.

Demands for Accountability

- Active engagement in human rights and torture discourse concerning Afghan women.
- Acknowledge and address implicit interference of the U.S. and Russia in the Afghanistan situation.

Survivor, Sri Lanka

IN FOCUS: Sri Lanka

Sri Lanka has been the home to one of the world's most violent conflicts, with clashes between the Sri Lankan government forces and the Liberation Tigers of Tamil Eelam (LTTE), who have been calling for self-determination and an independent state, since the 1980s. This conflict between the Sinhalese majority and Tamil minority has caused the internal displacement of more than 500,000, and has also placed the minority Muslim population in the north and east, who generally speak Tamil, in the crossfire. In 1990, the LTTE massacred Muslims in the east, and in the north, the Muslim community was forcibly evicted from their homes. The majority of the northern community remains displaced.

Good morning, everybody. Thank you very much, Dee and the IPJ team. Before I start my testimony I just want to brief you about the Sri Lankan ethnic conflict because it is not very well known. Seventy percent of the Sri Lankan population is Sinhalese, 20 percent of the population is Tamil and 7 percent of the population is Muslim. I come from the Muslim community, in the north part of Sri Lanka, Mannar Island.

The Sri Lankan ethnic conflict has gone on for the past 20 years. The rebels, the Tamil Tigers, evicted the entire Muslim community; about 80,000 of them got evicted. And I don't think any international forum or anybody has witnessed on this particular issue. For the past 15 years, this community has lived in the refugee camps, and my family is one of them. The Muslim community is ethnically Tamil because they speak the Tamil language and originally belonged to Tamil culture. But because of the tension that was created by the Sri Lankan government recruiting the Muslim community youth to the military and to home guards, they have tried to divide the two minorities separately.

One of the things that I fear is there is this rise in identity-seeking that's going on, because in the last 15 years, because of the eviction that happened to us, there is a very strong Muslim party, a political party that is coming up. It is called the Muslim Caucus. So we are in a very powerful position to lobby and get these people back to their



Destruction of civilian houses in Mannar

homes. But, the Muslim political party wouldn't do that because keeping us as refugees is good for them – they get a solid vote base where they can get two members elected to the parliament, so they really want to keep us where we are.

The other thing that is going on right now is the idea of a separate identity for Muslims and separate territory for Muslims. Since Tamils are asking for a separate territory, Muslims also want their separate territory, because in the east they are a majority. So, they are asking that the east part of one part of Sri Lanka be their own territory, which means that once again the northern Muslims have to forego everything and forget about their homes. When we got evicted we were given 24 hours and we were allowed to take only one change of clothes and only \$3. The Muslims just came empty-handed.

Because of this political party and this new identity-seeking in the east, the Muslims who lived in the north are much more secular in terms of tolerating other religions and other cultures. But now it's becoming more of an extreme group of Muslims, and women are forced to cover, their mobility is being controlled by the extremist groups who are working in the refugee camps.

Right now we have had a ceasefire for the past three years. We had six rounds of peace talks and after one year of that ceasefire agreement, the Tamil Tigers walked away from the negotiating table. My main focus here is to highlight that there is a complete absence of women's voices in Sri Lanka's main peace process. We don't have a single woman at the main table. Norwegians are

negotiating in Sri Lanka as a third party, and we don't have a single woman on the Norwegian side either. There is a sub-committee, but it's always "sub." My testimony here is just to highlight a little bit of what our women have undergone during the war, and why we need at least more than 50 percent of women at the main table.

Having said that, I am coming to a hot topic these days. Everyone talks these days about women suicide bombers. Sri Lanka is very famous for that. Every time I meet somebody, people say to me, "You come from a country where lots of women blow themselves up." I'm going to tell you why women started joining the suicide unit of the Liberation Tigers of Tamil Eelam (LTTE), or Tamil Tigers.

The whole armed struggle in Sri Lanka started in 1983. In 1987, women didn't join the movement as fighting forces, but they were friends or they campaigned for the cause. From 1987 onward, that's when Sri Lanka introduced PTA, the Prevention of Terrorism Act, and ER, or Emergency Regulation in Sri Lanka, under which women can be arrested, tortured and raped under the allegation that they have some connection with the Tamil Tigers.

In 1987, the IPK, Indian Peacekeeping Force, came to Sri Lanka to keep peace, but soon they started fighting with the Tamil Tigers – and one of the things they left behind was about 800 raped women. These are the women who joined the militant movement first to blow their bodies up. In

In Sri Lanka ... once you get raped, there is no life for you. ... [T]he LTTE used that for their own good. They went around campaigning for women who got raped to join their suicide squad and kill the perpetrators, using their polluted bodies.

Sri Lanka, the society I come from, once you get raped, there is no life for you. Either you kill yourself or you do something – so the LTTE used that for their own good. They went around campaigning for women who got raped to join their suicide squad and kill the perpetrators, using their polluted



Women in the LTTE

bodies.

One such internationally known event was the killing of the former Indian Prime Minister Rajiv Gandhi. A Sri Lankan woman named Thenmozhi blew herself up, killing the former prime minister, taking revenge on the IPK, who raped her. She left a note behind saying she used her body against the enemy. So far, we have heard of about 800 women who at least talked about the rape incidents, and many of them have disappeared. In the last three years there has been a ceasefire and, under the cover of a ceasefire, there have been many political killings, there have been many women who have come forward to talk about it. But the perpetrators are out there, so these women don't have a forum to address this issue.

I'm also going to focus on one particular case I've been working on in the last four years or so. This is the only case where these two women came forward to talk about the rape. In my hometown, two women got raped. One was five months pregnant at that time. The other had a 10-year-old son. The navy took them from a motel. Fourteen soldiers raped them. They got them to sign a confession which was written in the Sinhalese language, which they cannot understand, saying that they have connections with the Tamil Tigers.

Many women who worked in the south, like us, could not even address the issue because the very moment you talk about something to do with the Tamil Tigers, you are considered part of that. So, how does the women's movement even talk about it when the perpetrators have a confession saying these women have links with them?

There is a powerful act in Sri Lanka which allows

torture. Two days after these women were raped, all the women who lived on that island where I live came out wearing black bands around their mouths, saying that something needed to be done. At that time, the political forces just dismissed the litigation of torture and rape and said, "This was carried out by a handful of bad people." It sounds very familiar to you, because always they say this. What happened after that is that Amnesty International took it up and then pressured us to appoint a committee to hear the case. In the meantime, the perpetrators were transferred from the conflict area to a more safe area. So, they got promoted actually.

These women were brought to the south for testimony. Every time we brought them, we brought them with a U.N. vehicle because these women's lives were under threat. And these were the only women who came forward to talk about it. This is going to be a landmark case in Sri Lanka.

This case has dragged on for the past four years, and last month, we wanted the women to testify in front of a critical judge. One of them disappeared. We couldn't track this woman. We were trying to figure it out. How long must women like us go around and protect them? For four years, how do we protect these women? I went around looking for her, but I heard from her relations that her husband was threatened by the military, so he had to escape to India. So, we couldn't even take these women to testify now.

In Sri Lanka, there is a ceasefire, but these men are perpetrators sitting at the table and talking

... these men are perpetrators sitting at the table and talking about peace, peace with their own agenda.

about peace, peace with their own agenda. Child conscription is going on. Even after the tsunami, the tsunami orphans were recruited by the LTTE – nobody talked about it, not even the orphanages. If these men are sitting around and talking about the peace that they need, it's only because of the \$4.5 million that the international donor community is offering that is making these men to sit around and talk about peace. This is going to continue and our women's voices are not going to be heard.

I want the victims to sit at the main table.

At the same time, women are out there on the street protesting against all these things that are happening in my country. What I'm asking is all of you, when perpetrators sit around and talk about peace, if you could somehow put pressure to bring these women. I want the victims to sit at the main table.

The request I have for the panel is somehow to make sure this community gets some visibility.

Thank you.

Demands for Accountability

- Inclusion of women survivors at the peace table.
- Creation of a gender-sensitive resettlement program for refugees, including advocacy of land rights for women.

WOMEN'S RIGHTS IN ISLAMIC SETTINGS

Leila Labidi, for El Taller International
(Interpreter: Raed Khader)



Leila Labidi is actively involved in the Committee for Research at the University of Tunis and El Taller International's Committee for the Arab World. She holds an M.A. in Anthropology from the University of Manouba in Tunisia.

Raed Khader worked for seven years as a youth coordinator for El Taller International and helped coordinate the Africa Court of Women held in Nairobi, Kenya in 1999, and the World Court of Women Against War, For Peace in Cape Town, South Africa in 2001.

Good morning, everybody. My name is Leila Labidi. I come from Tunisia, a small Arab country situated in North Africa on the shores of the Mediterranean Sea. Tunisia also has a huge desert situated in the south of the country. I come being filled with thousands of voices of Arab women. I come with a lot of different stories of pain and suffering, and also with the hope and ambitions of Arab women. I come from an Arab country filled with a lot of disappointment, as well as a great hope. My disappointment is actually based on my inability within this very short time to bring out the voices of these women's stories filled with, in the Arabic expression, "salt and sweat." The other hope is a huge hope in bringing the voices of these women, both those who are still alive and those who have died.

There are crucial issues that take universal dimensions. One of these issues has been the result of war and armed conflict. For instance, who from

IN FOCUS: El Taller International

El Taller is an international NGO based in Tunis, Tunisia with over 500 partner organizations in the world. El Taller seeks to be a space for reflection, exchange and networking for a wide spectrum of civil society and social movements in the global South. The Asian Women's Human Rights Council and El Taller, in collaboration with organizations and networks in different regions, have organized 35 Courts of Women in different parts of the world. The courts are public hearings in which the voices of women are listened to – as victims, survivors, resisters. Seeking to connect the subjective testimonies of the women with objective political analysis, the courts reveal the interconnections between the various forms of personal and public violence against women in different societies.

the audience has not heard of the Middle Eastern conflict? Who does not know of the war in Iraq? There are other issues that are not the products of war and armed conflict; these issues are based on an interior form of violence, or what we refer to as social and cultural violence. And these forms of violence touch the human being in general and women in particular. In situations of war, women are subject to beatings, rape, displacement, killing and marginalization. We have thousands of different stories and testimonies that portray the very scenes and pictures; each story has more than a thousand wounds unveiled through the public hearings within the Courts of Women.

What are the Courts of Women? These are symbolic public courts that are based on listening to different testimonies of women who were victims of different forms of violence. We hear voices of

We hear voices of resistance. We hear voices of women who are struggling daily to survive. We hear their struggle for a better future for a brighter tomorrow.

resistance. We hear voices of women who are struggling daily to survive. We hear their struggle for a better future for a brighter tomorrow. For the

first time in Pakistan, the Asian Women's Human Rights Council has organized a series of public hearings for various testimonies based on violence against women. There are other courts that have also been organized in Japan, India, Nepal and in Beijing.

There was also the court organized in Beirut, Lebanon in 1995. And this court has been organized by El Taller International, with the participation of

various women who represent 14 Arab countries: Iraq, Palestine, Syria, Lebanon, Tunisia, Egypt, Algeria, Jordan, Yemen, Mauritania, Morocco, Bahrain, Kuwait and Sudan. This is a very unique event which has unveiled various testimonies on the various forms of violence perpetrated vis-a-vis women in the Arab region. From this Arab court we have picked one testimony. We will listen to Souad Srour on the invasion of Israel to the refugee camps of Sabra and Shatila in 1982.

By Video:

I shall narrate what happened to me and to my family during the Sabra and Shatila massacres, when Israelis invaded Beirut in 1982. I was 17 at that time. On September 17, I was going with my 12-year-old brother, Maher, to the shelter where my friends were hiding from the shelling and the sniping. We saw bodies lying on the road, some bleeding and screaming for help.

I recognized our neighbor, Abu Rida, screaming for help. He told me, "They slaughtered us, raped the girls and took away all the girls aged 12 to 16. Run away. Don't stay in your house. They will come back to kill us all."

Suddenly we heard a shout: "Hey, dogs, you are still alive? Not dead yet?"

We ran home and told our father. He said, "Nothing will happen if God forbids. He created us. Let him do what he wants."

On Friday, September 18 at 4:30 a.m., our neighbor and my brother went up to the roof to check how the situation was. They were spotted by the militia based on the hill near the house. Within minutes there was knocking on the door. When my father opened the door there were 13 gunmen. They said they wanted to take everything. I said, "You have taken the most precious thing, our land. What more do you want?"

One of them answered angrily, "Just wait and see – we will take you and your sister."

My father begged to take everything except children. One of them ordered us to stand facing the wall. My baby sister raised her hands to my mother, wanting to be carried. They started shooting. She was shot in the head. Her brain scattered all over. I saw my father battling for life, having been shot in his chest.

My brothers, Shadi, 3 years old; Farid, 8 years old; Bassam, 11 years old; my sisters Hajar, 7 years old; Shadia, 1 year old; and our neighbor all died on the spot. My brothers, Maher, 12 years old, and Ismail, 9 years old, were safe as they were hiding in the loo. Mother and my sister, Nuhad, 16 years old, were wounded but alive.

The soldiers left us, thinking we were all dead. I told my mother, sister and two brothers to run away and send help to rescue me and my father. At about 10 a.m. three soldiers came back and found me and my father. They raped me, one after the other in front of my father, and left. My father said, "May God help you," and breathed his last. I know my father could not bear what he saw. I was only 17 years old at that time.

On Sunday, September 20, Lebanese militia found me. They took me to the intensive care unit of the Red Cross hospital. Later I was shifted to AMU Hospital in Beirut. As I began to remember, I became hysterical. I could not speak. Many days later when I met my mother, I had a nervous breakdown. I

was shifted to a Palestinian hospital, the Red Crescent.

Even before I recovered fully from fits, I was asked to go to Trablous in northern Lebanon for further treatment. I left in a car with a driver and a guard. As we reached [a] barrier, Israeli soldiers stopped the car. They asked the guard to undress and sit on a bottle. They hit him on his head. He died on the spot. Then they raped me repeatedly in front of the driver and left us.

The next day the driver took me back to the hospital in Beirut. I remained in the hospital for two years, moving in a wheelchair and not being able to speak.

This was a powerful testimony. I don't think I can find words to comment on this testimony. This testimony is classified among political crimes. The tragedy of the Arab woman, especially in situations of war but also in situations of peace, is that she is looked at as an object of sexual pleasure. This tragedy in situations of war is not caused only by the occupier, but by the ideology that makes rape of the Arab woman its sole objective, its direct objective and the objective of the occupier who considers this the most extreme form of

social, moral and religious humiliation that could be perpetrated vis-a-vis the Arab woman. This is not only because most of the Arab governments rely on oppression to defend their supremacy or authority in the absence of democracy, but this is one of the biggest powers of occupation that has been implemented in the Arab world. It is based on the most atrocious ways of displacement, killing, destruction of houses, detention and torture. Let me now illustrate with one testimony from Om Ali from Palestine.

By Video:

If I have to tell you the story of Palestine, even a full year would not be enough. We have suffered as refugees for the last 53 years. No country in the world respects us. They say, "You are refugees, go back to your homeland."

Fine. Could you please tell us where is our homeland? Where are our human rights? Why can't I return to my country, my homeland? Palestine is my right and the rights of my children. It is the land of my family. It is the land of my ancestors.

Since 1967, I have hoped to return to my villages: Yafa and Haifa and Ellod and Dir Tarif and Lubana. It is my right and it is the country of my ancestors. I have been carrying this key to my house for 53 years. Even if I have to hand it over to my children and grandchildren, I will hold on to this key until we go back to Palestine and open our door with this very key.

It will take me ages to tell you the tale of Palestinians because Palestine is part of our body, part of our soul. Our children are precious and I find it horrendous and inhuman when you allege that we are sacrificing our children. They have chosen out of their own will to sacrifice themselves for the sake of their children and grandchildren, so that they won't suffer the miserable life in refugee camps, so that they won't suffer from hunger, poverty, deprivation.

It is our legitimate right to go back to our homeland. We will go on fighting until the last child from our people. Long live Palestine. Long live freedom.

There are other forms of violence perpetrated on Arab women, what we call social and familial, or domestic, violence. This is not a form of violence that is a product of war. This is a form of violence that is a product of bad traditions and sick mentalities. This particular form of violence illustrates the image and the situation of women who are under the patriarchal authority within the framework of the family, where this form of violence is being perpetrated on women through organized and perma-

nent ways. We have picked two different forms of violence. The first is from Mauritania and it will be given by Fatima Nour. It concerns force-feeding.

The second form is female genital mutilation, and we'll hear Ragia from Egypt. These two forms of violence are not very well known in the Western world, so that is why we have picked these two [testimonies], so you will be aware of them.

By Video:

In my experience, most victims of violence are women. Violence pains us all in a very personal and sensitive manner. I like to share my feelings with you all especially with Arab women who are the victims of circumcision, forced feeding and a compulsory early marriage.

I cannot forget the pain of circumcision as it is etched deeply in my mind. The worry and the horrible pain is beyond expression. As I grew up I realized my disfigured body: a part of my body, an essential part of my femininity, removed and thrown away without my permission. Even before I could comprehend this pain, yet another assault on my body began.

At the age of 10, I was taken to a specialist on fattening and left with other girls aged between 8 and 10 years. Every day we were woken up at 5 in the morning with jugs full of milk. We must drink 30 to 40 liters everyday. The specialist had a wooden pincher to press the fingers of those who refuse to drink and those who stop drinking. Scared of her torture, we would force ourselves to drink more. If anyone vomits she must drink it again.

I will never forget the day when my friend couldn't drink anymore. Her stomach burst open. She died on the spot. This made us even more scared and we drank more and more. We underwent special exercises meant to broaden our bodies. In our society a fat girl is a sign of beauty. The more you weigh, the more beautiful you are. It makes the girl obedient for a compulsory early marriage.

Sometimes the girls marry at the age of 10. In some cases, the age gap between the couple is 70 years. I was the first girl from my generation who went to school. I found it extremely difficult because I was so fat. But my will power prevailed and I continued my studies. I kept on exercising to reduce my weight. Yet I couldn't escape the custom of compulsory marriage. I was married to a man 45 years older than me. He treated me like an animal, not like a woman. Though the marriage ended in a divorce, I loved my children.

My education helped me to overcome the consequences of forced feeding and early marriage and build up a new life of happiness. What I cannot overcome and rebuild is that part of my body which was cut and thrown away.

By Video:

"We spent our days between going to school, playing with our friends in the neighborhood and helping our mothers in the household. It was the time when we knew there was this part of our bodies which has to be removed so that we develop into proper women and wives as we should.

"They told us it is done so that we are clean and pretty, that we develop fast into young women, and so that our husbands are happy with us when we get married. We had heard from our older friends that it is also done to secure that the girl does not do wrong before she gets married. We were frightened. There will be a lot of pain. There will be a lot of blood. However, there will be candy and a new

dress and a whole chicken for lunch. After that we shall no longer be children, and we shall not be able to play as we used to. But then also, we shall be treated as potential young women, bear the responsibilities of young women and have the charm of young women.

“On the day of our circumcision, our mothers disagreed on where to circumcise us. Nura’s mother insisted on asking the barber to circumcise me like everybody else. She knew the man and he had been doing this for the past 10 years and had a good reputation for it. My mother refused the barber, and insisted on going to a doctor. ‘The Minister of Health,’ she said, ‘has ordered circumcision to be done in hospitals and has prohibited lay people from cutting into our bodies. We should go to the hospital and there a professional doctor will do the job and charge us only 10 pounds. The minister is a doctor himself,’ my mother said. ‘And his orders are to protect girls from the hazards of ignorant circumcision.’

I tried to convince Nura to tell her mother to come with us to the doctor, but Nura was frightened to talk to her mother who had made up her mind. I was taken to the doctor to have a professional, painless circumcision, and Nura was taken to the barber.”

Amira and Nura are both absent today from this event, not only because they do not know about Beijing¹⁵ – and had they known, they would not have had the access – but because both of them are dead. Knife and scalpel went through their bodies, removing what barber and doctor considered unnecessary parts. Amira bled to death in the hospital, and Nura’s respiration stopped after an injection that the barber gave her to stop her pains. Amira and Nura did not die of malpractice, they died in a premeditated act of violence that led to their deaths. No fair trial for their violators will take place, except in a court attended and ruled by women who have decided once and for all to struggle against violence based on their gender.

These testimonies speak for themselves, so I will be brief because of the lack of time. Because violence deprives women of their basic dignity, we invited you today so that you could be with these women through their resistance of all forms of violence, oppression, ill treatment, segregation. We invited the jury committee and the audience, and we are very sure that each one from his or her position will be able to resist and to stop all these forms of violence perpetrated on women.

This could be through, for instance, the various forms of solidarity with the victims of these forms of violence, and the help, support, orientation and direction to hold accountable the perpetrators of these forms of violence; the condemnation of all

The women in the Arab world are carrying on their struggle, their resistance, and they are holding their voices and shouting with all their force so that they can make their voices reach all corners of this world.



Women at the Islamic University in Gaza
(photograph provided courtesy of IRIN)

those segregatory laws; and the demand for new laws that could protect women from all these forms of violence. It is a good idea to start by making these forms of violence public and lift the veil. The women in the Arab world are carrying on their struggle, their resistance, and they are holding their voices and shouting with all their force so that they can make their voices reach all corners of this world. Let’s hear them, let’s open a new door of hope and let’s build new bridges of connection and solidarity for one cry, the cry of freedom.

15. “Beijing” refers to the Fourth World Conference on Women, held in Beijing, China in 1995.

Finally, I invite those who are preparing their breakfast to think of others and not to forget their food; and for the ones who wage wars to start to think about the other human beings and not to forget those who are crying for peace; and for those who are going back home to think about other human beings and not to forget the people of the camps; and for those who are speaking in the

... we invite you to be a candle in the darkness.

name of democracy, freedom and human rights to think about the other human beings who lost the power to realize his or her dreams; and for all of you who are thinking about other human beings, we invite you to be a candle in the darkness. Thank you for coming here.

Goldstone: Can I ask one question? When I last checked, there was only one member of the Arab League, Jordan, that has ratified the Rome treaty for the International Criminal Court. I was wondering what could be done to encourage members of the Arab League to join, whether your organization is doing anything or whether other human rights organizations in the Arab world are doing anything.

Labidi: It's very difficult now in the situation of the Arab world for those Arab governments to be a part of the International Criminal Court. But the efforts are being deployed mostly by civil society. NGOs are working hard to put pressure on these governments, which is not an easy task, but they are doing it right now. El Taller is among those NGOs putting pressure on them to ratify the treaty.

Ezeilo: Let me follow up on that. What about the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), including the U.N. Declaration on the Elimination of Violence Against Women? Most Arab countries have failed to ratify CEDAW, and the few that have done so have made sweeping reservations – that it fails to comply with the basic tenets of Islam, that they will not enforce that. That actually goes against the Vienna Convention of Law of Treaties, because it goes to the fundamental objective of enactment of that law.

Labidi: Thank you for your question. CEDAW was ratified by only six Arab countries. It is like ink on

paper. They ratify, but the actual reality is very different than the ratification of these documents, so what we see on the ground is totally different from those treaties because it simply contradicts with Islamic Shariah. What is frightening is that they take the Shariah Islamic law as an excuse to justify all the perpetrations of these forms of violence: the right of adoption, the right of immigration, the right of a woman to choose her husband. For instance, in Jordan, I'm sure some of you know, the wife cannot give her name to her children if the husband does not share the same nationality. So there is a great gap between what we see as law and the actual implementation on the ground.

Bensouda: Is it not the case that Shariah law is distorted to a level? It is more a tradition that is being imposed on people and not the Shariah, because I think a correct interpretation of the Shariah is not as harsh as it is made to seem. It is actually the traditions of the people and the laws of men.

Labidi: This is a good question. I wanted to debate this particular point, but due to the lack of time, I don't think I can. In Islam, we have four different trends, and each trend would like to use Islam in order to serve its own interests. But as you are right, there are certain forms of violence, like female genital mutilation, that do not have any link with Islam. It is purely traditional – an old, bad practice, like force-feeding as we have seen in Mauritania. But as far as female genital mutilation is concerned, we put religion aside. The reason is very simple: A woman who does not get circumcised would be surrounded by the devil and she therefore has to be circumcised so that her appetite or lust for sex would not be so wild, and so that she can also protect the honor of the family and the husband. So we always come back to the patriarchal discourse and the patriarchal order that is prevailing in the Arab world.

Judges: Thank you.

Demands for Accountability

- Provision of support, orientation and direction to hold perpetrators of violence accountable on a national and international level.
- Condemnation of all segregatory laws, and demand of new laws to protect women from violence.

Golalei Nur, Afghanistan



Golalei Nur was elected in 2005 to represent the province of Mazar-e-Sharif in the Afghan National Parliament. Since 2002 she has worked as the head of Doctors of Hope for Medica Mondiale in Afghanistan, where she focuses on trauma-sensitive medical treatment in governmental Afghan hospitals for women and girl survivors of violence.

Good morning, ladies and gentlemen. I am Golalei Nur, an Afghan doctor. I am very happy to be here to have the possibility to share information on the situation of Afghan women. I would like to focus on the women's health situation in Afghanistan. I am working as a coordinator for a doctor's program of Medica Mondiale in Kabul. The aim of this program is to offer medical treatment in state hospitals in Afghanistan to women and girls, taking their difficult psychological situations into account.

Decades of war and violence in everyday life have left their mark in Afghanistan. Women and girls in particular suffer from the consequences. They have been subjected to and continue to suffer from rape, forced prostitution and marriage, trafficking and domestic violence. These experiences of violence are gross violations of human rights.

Women and girls who have experienced this violence may suffer psychological trauma – profound damage on a psychological level. Traumatic experiences go beyond the bounds of what people can generally bear, and they bring about long-lasting and serious psychological and physical damage. Normal Afghan women suffer from severe depression as a consequence of their traumatic experiences. Many of them are suicidal or have already attempted suicide on one or more occasions. There is a high incidence of psychosomatic

disorders among women in Afghanistan.

I work and visit several hospitals in Kabul and Mazar-e-Sharif, and in all the hospitals the situations are catastrophic. There is a huge lack of medical equipment, medicines and well-educated personnel. By law, patients do not have to pay for their medical treatment. But in reality, they have to pay for everything: for injections, infusions and even for surgeries. If you ask the person why the situation is like this, all of them answer that it is because of the loss of salary, which is about \$40 a month. Compared to the cost of livelihood, it is nothing. The morale to work is absolutely bad; there is no discipline at all. The doctors arrive at 9 in the morning and leave at 12, some as early as 11.

This is the general situation, and for the woman patient it is even worse. Legally they do have the same rights as a man, but it is not the case. Most of the women need permission from their families and their husbands to go to the doctor. Many are not allowed to go, even if they are very seriously ill. For example, if a man is ill, everyone cares about him. If a boy is ill, the family tries everything

Most of the women need permission from their families and their husbands to go to the doctor. ... Many husbands, brothers or even fathers do not allow women to go to male doctors.

to bring him to the hospital. But they don't pay attention if a girl suffers from an illness. Many husbands, brothers or even fathers do not allow women to go to male doctors.

I know a lot of stories of the hard lives of women in Afghanistan. There is not enough time to tell them all. But for an example, I will tell you about a woman who was forced into marriage at the age of 12. She had a very hard life and experienced a lot of violence. At 16 years of age, she became pregnant. During the delivery she did not have any support. There was no hospital or doctor or midwife. Just before delivery, she couldn't bear the pain any longer and left the house to go outside. She was not able to find anyone who could help her and she delivered her baby in the garden. After

several hours, a family member found her and her baby dead, frozen stiff.

If a woman is finally successful in reaching a hospital considering all of the difficulties, she will face non-adequate medical treatment. I have seen that many women are beaten when they are crying during the delivery. Doctors and nurses shout at them.

Generally there is a lot of violence against women in the family, in the society and even in the institutions. As a doctor, I have seen many injuries as a result of beatings, kickings and violations with different tools: knives, spoons, metal sticks. In many cases, self-immolations and suicides are reported. Forced marriage and child marriage are the main reasons for suicide. Therefore, Medica Mondiale combines their medical work with political work and fights for the elimination of forced and child marriages.

Another reason for the bad psychological and health situation of women are the rapes perpetrated during the last two decades. Every political group rapes women, girls, boys and also men, and use it as a weapon of war. Many girls and women commit suicide after they have been raped, or they are killed by their families.

Even now the armed warlords use their power. They still kidnap girls and marry them using force. Especially in the provinces, most people can't defend themselves. If they go to the police or court, nobody will care because of the widespread corruption.

I will tell you another example. Several weeks ago, the Afghan media reported that in northern Afghanistan, a warlord wanted to marry a 13-year-old girl by force. The mother rejected him and hid her daughter. He tried several times to catch her but couldn't. Out of revenge, he raped the girl's 60-year-old mother. Beneath the fear, the strong taboo makes it impossible to have an open discussion about the case of rape and violence.

Having knowledge of all this suffering of and injustice against women, I decided to be more powerful and to get a position where I will be able to change the situation. I decided to become a candidate for the Afghan National Parliament. I have been elected and I am very proud to be in this position and to fight for women's rights in Afghanistan.



A woman is attended to at a hospital in Kabul. She had attempted suicide by setting herself on fire, a practice known as self-immolation. (photograph provided courtesy of IRIN)

Unfortunately, most members of parliament belong directly or indirectly to the criminal groups responsible for the deaths and massacres of the Afghan population. But we hope that international bodies will not allow them to misuse their power again. It is important that the perpetrators are brought to justice on a national and international level. It is also crucial that the Afghan government gets pressure from their donor countries to implement and monitor women's human rights, and that donor countries ensure that a significant amount of money goes to local women's organizations. Thank you.

Demand for Accountability:

- Pressure the Afghan government to implement and monitor women's human rights, and ensure that a significant amount of money goes to local women's organizations.

COMPENSATION FOR WRONGFUL DEATHS BY INTERNATIONAL FORCES

Anne Hoiberg, on Iraq



Anne Hoiberg in front of photo depicting a demonstration in Iraq

Anne Hoiberg served as a research psychologist and department head for the U.S. federal government at the Naval Health Research Center in San Diego for 25 years. She is director of the Women's Equity Council of the United Nations Association (UNA) of San Diego.

IN FOCUS: War in Iraq

After Iraq's defeat in the war over Kuwait, the United Nations imposed no-fly zones and required Iraq to surrender and allow U.N. inspections for any weapons of mass destruction. By 2002, Iraq had repeatedly interfered with these inspections and, unlike France, China and Russia, who wished the United Nations to finish inspections, the U.S. launched a unilateral military strike against Saddam Hussein's administration without the backing of the U.N. Security Council. The U.S. claimed Iraq was harboring weapons of mass destruction and that the administration held ties with al-Qaida, the terrorist network responsible for the Sept. 11, 2001 attacks. Investigators later found no evidence to corroborate either assertion. The war has ignited sectarian violence between Sunni, Shia and Kurdish groups, yet the U.S. has pressed on with steps toward political reform.

Good afternoon. I am honored to stand before this distinguished panel, this distinguished audience, and to be invited to be a part of this Global Women's Court of Accountability. In January and February of 2004, I was a member of a Code Pink Women for Peace delegation of 11 women who visited Iraq to learn from Iraqi women what their lives are like living under U.S. occupation. In my testimony on behalf of these women, I will bring to you their stories of terror, brutality, atrocities and death as a result of the U.S.-led invasion and the U.S. occupation. I am the voice of the voiceless women of Iraq.

I speak out for Anwar, a victim of a random shooting by U.S. soldiers in Baghdad. On the evening of the seventh of August 2003, at 9:30, Anwar, her husband and four children were returning to their home from a family birthday party. Close to home, an explosion occurred at a power plant, knocking out all of the electrical power. Almost immediately, a U.S. military vehicle appeared in the pitch black darkness and the U.S. soldiers opened fire on Anwar's automobile, killing the father and three of the four children. The surviving 8-year-old daughter's head, arms and thighs were pierced with shrapnel. Anwar was seven months pregnant at that time and she and her fetus survived. Her baby was a very healthy 6-month-old boy back in 2004.

Anwar filed a claim with the Coalition Provisional Authority, which was the ruling body at that time. She was seeking losses, not only for the loss of lives of her husband and three children, but also for the loss of her automobile and the fact that she no longer had a breadwinner. Her case was

Her case was denied because the random shooting occurred in a residential area that was not considered dangerous or in a war zone.

denied because the random shooting occurred in a residential area that was not considered dangerous or in a war zone.

Second, I am the voice of a Chaldean mother, a victim of a random accident that occurred between her family and U.S. soldiers in Iraq. She had hired

a driver to take her and her three children to a safer place: Amman, Jordan. En route to Amman, on

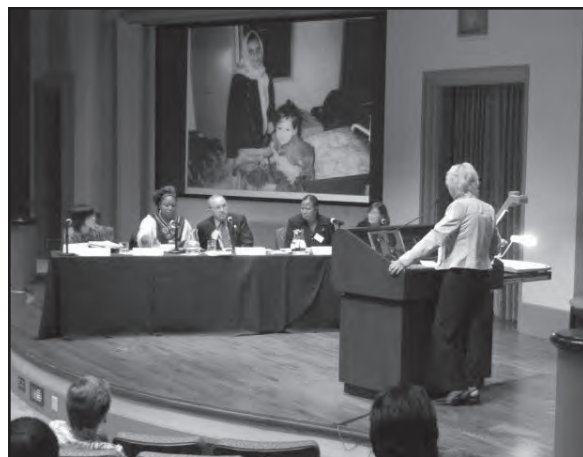
... the U.S. military denied a claim for compensation to pay for the medical bills and the automobile. The reason given was that the military has the right of way.

that very dangerous corridor, a U.S. Army vehicle in a convoy, proceeding in the right-hand lane, swerved from its lane – and it seemed presumably on purpose – into the path of the Iraqi-rented automobile and totally destroyed it. The three children were seriously injured – one requires extensive physical therapy – but the U.S. military denied a claim for compensation to pay for the medical bills and the automobile. The reason given was that the military has the right of way.

Such humanitarian aid organizations as the Bridge to Baghdad help victims such as these of random shootings and random accidents. They help them to try and get compensation for the loss of property (there have been so many robberies of buildings), for loss of limb, for loss of life – under the Foreign Claims Act. By the beginning of 2004, it had been estimated that more than 10,000 families and individuals had filed a claim – 10,000 families and individuals – although very few of these individuals and families have received compensation. When you hear the stories of the runaround that these individuals are given, you can understand their frustration and then their extreme anger.

Third, I speak on behalf of families of Iraqi detainees. After U.S. soldiers blast or burst their way into an Iraqi family's house, usually at 2 a.m., and roust the male members out of their beds, the men are taken away while the family members are terrorized by this brutal break-in. Occupation Watch's Eman Ahmad Khammas, who helps these families, told me, "No one knows what is happening to these people. After weeks or months, you find their names in a list put up by the Coalition Provisional Authority, but not all the names are there. This is a very big issue I am working on."

Another courageous woman is Peggy Gish. She works with Christian Peacemaker Teams, and



The panel of judges listens to the testimony of Anne Hoiberg

they also work with families of detainees in hopes of just gaining information on the whereabouts of these loved ones who have been rousted out of their homes, typically at 2 in the morning. These dedicated workers have helped to gain the release of only a very few detainees. During the first 15 months after the U.S. invasion, 45,000 men, women and children were detained, according to the *New York Times*. Recently, the U.S. government reports there are only 13,500 detainees in Iraqi prisons.

Fourth, I am the voice of Mithal al-Hassan and the hundreds of other women who have been incarcerated, some in Abu Ghraib. U.S. soldiers, in the middle of the night, arrested Mrs. al-Hassan, accusing her of being an agent for Saddam Hussein. She was held in Abu Ghraib for 80 horrible days, where she was frequently denied food and water, beaten and threatened. She said that American soldiers showed her pictures of her children and told her to say goodbye to them, for she would never see them again.

I am the voice of other women prisoners, and the estimates vary from a low of 90, which was given to me by a U.S. public affairs officer with the U.S. military, to as many as 1,500 women in two different U.S.-run prisons; this was provided to me by Occupation Watch. These 1,500 women range in age of 12 to women in their 60s. Iraqi women are arrested, detained, abused and tortured, usually not because they have done anything, but to force their close male relatives to cooperate or collaborate with U.S. forces. Now these bargaining-chip incarcerations are contrary to the Geneva Conventions, which stipulate that no one can "be punished

for an offense he or she has not personally committed,” and yet, these women are incarcerated.

Other published reports, such as Luke Harding's in the *Guardian* in May of 2004, state that U.S. soldiers in Iraq have “raped, sexually humiliated and abused several Iraqi female detainees in the notorious Abu Ghraib prison.” These accounts were later confirmed by Maj. Gen. Antonio Taguba's report. I'm sure you all remember when the report came out as a result of the horrible photographs that we were all subjected to. Although such brutal acts have been substantiated, no action has been taken against any soldier or civilian official because of the torture of women detainees.

Perhaps equally disturbing is the fact that photographs have been circulated on the Internet showing Iraqi women detainees in various stages of undress, or performing oral sex on U.S. soldiers. According to the Italian journalist – and I'm sure you recall her: she was held hostage for a month and then released and then her automobile was fired upon while she was on her way to the airport to return to Italy – she's done a great deal of research on women detainees. She states, “In Iraq, if you, a woman, have been in prison or have been abused, you must be killed or cut off from society. It is not only the Americans who abused you, but also Iraqi society. Such women are victims twice over: abused first in prison, they also have to face abuse when they return home.”

Fifth, I lend my voice to a woman who rescues women from becoming a victim of an “honor killing.” Few women in Iraq can leave their homes unaccompanied during the day, and no woman is seen unescorted at night. Women cannot drive alone during the day for fear they will be victims of a carjacking. Now during the first five months after the invasion of March of 2003, approximately 500 women were kidnapped, raped, sold into sexual slavery and/or murdered, according to Amnesty International.

A July United Kingdom *Independent* publication reported that 180 Iraqi women had been abducted and trafficked to Yemen, where they are enslaved in brothels. I am the voice of these 180 women. Two of these women have been rescued and returned to Iraq. Because of the fear of becoming a victim of an honor killing, these two women are under protection in a women's shelter. Sasan Salaam, the coordinator of the Kurdistan Cam-

paign against Honor Killing and Honor Crimes, and Yanar Mohammed, the founder of the Organization of Women's Freedom in Iraq, have established shelters for women in four different cities in Iraq. These are strictly for women who have been accused of adultery or of being raped.

Sixth, I lend my voice to those courageous women who risk their lives to serve in the ministries, as representatives of city councils or elected officials in the national assembly. Far too many of these really brave women have been assassinated, dating back to September 2003, with the killing of one of three women appointed to the Iraqi Governing Council, to the most recent, an elected member of the National Assembly who was gunned down last May.

When I talked to the minister of the environment in Iraq, I asked her, “How safe do you feel?” She said, “Well, I do have 13 bodyguards.” She is performing her duties as minister of the environment under great risk. She previously served as the minister of women's affairs.

The minister of public works and municipalities, too, has been under attack. She was returning to Baghdad with a convoy of cars and, to her benefit, she was not in the lead car. That car was hit by a roadside bomb and the driver was killed. These are the types of risks that these women take just to be serving their country.

I urge the court to stand in support of Iraqi women who are calling on the United States and the Iraqi government to meet their legal obligations under such international treaties and declarations as the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child and the other human rights conventions, including the Convention on Torture, the Universal Declaration of Human Rights and the Declaration on the Elimination of Violence Against Women.

Seventh, my voice needs to be heard to echo those women who protested in February 2004 against Resolution 137, which would have implemented Shariah law. They managed to get that repealed.

However, I also want to lend my voice to the 200 women who took to the streets last July to protest Article 14 of the new constitution, which will

replace with Shariah law the more progressive personal status laws under Saddam Hussein. Now, under Saddam Hussein, and before Iraq was liberated by U.S. forces in March of 2003, Iraqi women enjoyed rights to education, employment, freedom of movement, equal pay for equal work and universal daycare, as well as the rights to inherit and own property, choose your own husbands, vote and hold office. Under Shariah law, how many of these rights will Iraqi women be able to enjoy?

I urge the court to stand in support of Iraqi women who are calling on the United States to meet its legal obligations under The Hague Convention, the Fourth Geneva Convention and U.N. Security Council Resolution 1325.

Eighth, I lend my voice to those professional women whose careers have been stopped because of the invasion and the insecurity caused by the U.S. occupation. Because of the lack of security and the lack of employment opportunities, these women have been unable to return to their work as pharmacists, engineers, professors – none of these women have a job.

I also lend my voice to the poorest of the poor women in Iraq, those who seek only the basics. One of these women screamed out that she just wanted water to bathe her babies; she hadn't bathed her babies in 13 days. Another woman said, "I must have my pension to support my children." Pensions were no longer being distributed. And, of course, all of these women were living in a squatters' camp and they questioned us about the reconstruction money the U.S. had promised. "When are we going to get our flats back? When are our old apartment buildings going to be restored?"

And finally, I speak out for the children of Iraq who are unable to attend school because their parents fear they will be abducted. These are children who are living in a squatters' camp, unable to go to school.

I lend my voice to acknowledge malnourished, injured or ill children who need to receive care, including those who suffer from post-traumatic stress disorder. We did meet with a psychiatrist who had done a survey on children in Baghdad, and 85 percent of those children suffered from post-traumatic stress disorder.



Iraqi women in Fallujah (photograph provided courtesy of IRIN)

I urge the court to stand in support of mothers who are calling on the Iraqi government, a party to the Convention on the Rights of the Child, and the United States, which is not a party to the Convention on the Rights of the Child, to meet its obligations to provide care for Iraqi children.

I will conclude by saying that on behalf of these voiceless women, I call on the court to use their good offices and influence to bring those who remain complicit in the commission of atrocities against women to account.

Goldstone: One question, Ms. Hoiberg. In your capacity as an officer of the UNA, do you have any views on the suggestion that came from Ms. Senjak from Bosnia that there should be a special U.N. agency dealing with rape survivors? She suggested an independent agency, such as UNICEF or UNHCR, but it could be, it seems to me, even a special agency under the aegis of the High Commissioner for Human Rights.

Hoiberg: Well, there is UNIFEM, the Development Fund for Women, and they currently do have a task force on violence against women, so that might be one avenue to suggest one part of UNIFEM to take on this issue. UNIFEM is already established, so at least you would be well on your way to creating another facet of that agency.

Goldstone: It just seems to me that as huge as the refugee problem is, and one obviously applauds having such an agency as UNHCR, I'm not sure the global community gives sufficient recognition to the enormity of the violations that women suffer on all continents daily.

Hoiberg: I think everybody in this audience would certainly agree with that. Of course, one of the major problems with any of the U.N. agencies and funds is one of funding, and we know that UN-HCR operates on about \$1 billion a year, which is unbelievable when you consider how much care is given to refugees, 17 million refugees. I know that UNIFEM operates on about \$20 million. We're talking about very limited funds available, but I certainly think all of us here would support the idea of creating another agency.

Ezeilo: I would like to know more about the role of your organization in ensuring that these women get justice, particularly creating the awareness nationally. I am also actually intrigued about the contradiction: the trend what we usually see in post-conflict reconstruction, particularly in a constitutional and legal framework, is progressive measures that would recognize human rights of women. But in Iraq, being midwifed by the U.S., you find a big retrogression because now women's rights they even enjoyed under the repressive government of Saddam Hussein – they had their rights, they could walk the streets without the veil – now the veil is coming back quickly, now they may have a constitution that declares it an Islamic state. There is a big huge problem they have institutionalized there. At the end of the day, the women will be worse off, the women will be in a worse situation than they were before. This is really a problem I think we must really highlight and bring to the attention of the United Nations.

Hoiberg: It is a huge problem and I think it's a problem that is pretty much a silent problem. Everybody is more concerned about our troops and I think there's been very little publicity or awareness concerning what women go through because of this occupation in Iraq. When Code Pink returned from Iraq, we did meet with several of our Congress members to increase their awareness of what was going on in Iraq, but as you can see, we made very little progress.

Judges: Thank you.

Demands for Accountability

- Support of Iraqi women who are calling on the United States and the Iraqi government to meet their legal obligations under such international treaties and declarations as the Convention on the Elimination of All Forms of Discrimination Against Women, Convention on the Rights of the Child, Convention on Torture, Universal Declaration of Human Rights, The Hague Convention, Fourth Geneva Convention and U.N. Security Council Resolution 1325.
- Support of mothers who are calling on the Iraqi government, a party to the Convention on the Rights of the Child, to meet its obligations to provide care for Iraqi children.
- Bring to account those who remain complicit in the commission of atrocities against women.

ANFAL AND TRAFFICKING OF WOMEN

Dilkhwaz Ahmed, Iraq



Dilkhwaz Ahmed established the *Nawa Center in Sulaimanya, Kurdistan*, to assist abused women survivors of Anfal. She was granted political asylum in the U.S. in 2002, and since then has worked for *License to Freedom*, an organization dedicated to helping immigrant and refugee women victims of domestic violence in San Diego.

Many of you know what happened to Kurdish people in Iraq under the regime of Saddam Hussein. I do not want to repeat it; but I would like to give you the flavor, the taste, of the torture that I experienced as an activist for Kurdish women and as a witness of what happened.

Anfal was an anti-Kurdish campaign orchestrated by Hussein's Baathist regime from 1987 to 1988, during and immediately following the Iran-Iraq War. Taken from the Quran, Sura Al-Anfal, or "spoils of war," Anfal was the code name used for the genocide of the Kurdish community of northern Iraq which claimed the lives of 182,000 Kurdish people, most of whom were women and children, and destroyed approximately 2,000 villages.

One morning, lives proceeded as usual: Children played with animals, women dreamt of freedom. Without any notice they were attacked, captured, put in military trucks and sent to the desert in the south of Iraq to be massacred.

Evidence shows some abductees were trafficked to Egypt. Document number 1601 issued by the director of Iraqi intelligence in Tamim Province, sent to the general director of intelligence in Baghdad,

IN FOCUS: Anfal

Kurdish people in Iraq have sought independence since 1918, when the country was under British control. The peace agreement in 1970 between Kurds and Iraqis awarded the Kurdish people considerable autonomy and jurisdiction of the oil-rich areas of Kirkuk and Khanaqin. Subsequently, the Iraq government attempted to "Arabize" the Kurdish territory in the 1970s by economically enticing Arab migrant farmers to populate the traditionally Kurdish regions to reestablish control.¹⁶ Kurdish land borders Iran, an enemy of Iraq, and some Kurds were initially considered allies of Tehran. Resistance to these measures by Kurdish insurgent groups intensified and culminated in the Anfal campaign, an attempt by Iraq to systematically eliminate much of the Kurdish population between February and September 1988. The government justified its actions by arguing it was fighting Kurdish rebel groups opposed to the government.¹⁷ In reality, women and children comprised many of the estimated 50,000 to 100,000 victims. During the massacre, army troops often separated men, women and children in "sorting centers" before relocating these villagers to different towns, prison camps or to execution areas for burial in mass graves.¹⁸

reveals that the Iraqi regime detained a number of Kurdish people in December 1989. It lists names of the detained, including a number of girls and women between the ages of 12 and 29, and states they were trafficked to Egypt as sex slaves. Sixteen years later their fate is unknown.

The names of the girls are:

1. Chiman Nazim Abass (age 22)
2. Hasiba Amin Ali (age 29)
3. Najiba Hassan Ali (age 18)
4. Shiler Hassan Ali (age 20)
5. Golmalek Ibrahim Ali (age 19)
6. Esmat Kader Aziz (age 24)
7. Khawla Ahmed Fakhradeen (age 25)
8. Qadriya Ahmed Ibrahim (age 17)
9. Habiba Hidayat Ibrahim (age 15)
10. Leyla Abass Jawhar (age 21)
11. Serwa Othman Karam (age 17)
12. Suza Majeed (age 22)
13. Kuwestan Abas Maulud (age 26)
14. Shukriya Rustem Mohammad (age 27)

16. Human Rights Watch. *Genocide in Iraq – The Anfal Campaign Against the Kurds*. July 1993.

17. Ibid.

18. Talar Nader, "Kurds Still Seeking Lost Women," *Institute for War & Peace Reporting*. 21 January 2004.

15. Paiman Shukr Mustafa (age 26)
16. Lmiah Nazim Omar (age 19)
17. Khurasan Abdulla Tawfiq (age 20)
18. Galawej Adel Rahim (age 12)

In the north of Iraq, Kurdish women were raped and sent to death. Widows still dress in black and pledge never to remarry. Orphans wait for their parents to return. Mothers wait for their trafficked daughters to come home. Hussein's government killed childhood; it destroyed motherhood.

***Hussein's government killed
childhood; it destroyed motherhood.***

I ask the Global Women's Court of Accountability to recommend that the government of Egypt provide an account of these 18 girls sold by Hussein's regime. We need to pursue the criminals of this act. We call for the survivors to bear witness, to recount what happened to them and many other women during this period. If found, grant these women gender-based asylum to the United States. This is my personal appeal for the honorable judges, and to each of the ladies and gentlemen of the court.

Demands for Accountability

- Information from the government of Egypt on the fate of 18 girls sold by Saddam Hussein's regime in 1989.
- Prosecution of those responsible for organizing and orchestrating the trafficking of these women and girls.
- Gender-based asylum to the United States if the trafficked survivors are alive.

TRAFFICKING OF WOMEN TO THE UNITED STATES

Survivor, Ethiopia

Testimony submitted to the court by Attorney Charles Song and the Coalition to Abolish Slavery and Trafficking

IN FOCUS: Coalition to Abolish Slavery and Trafficking

The Coalition to Abolish Slavery and Trafficking is dedicated exclusively to providing legal services to survivors of trafficking and works to ensure survivors of trafficking are provided linguistically appropriate, culturally sensitive and victim-centered legal services.

I am a survivor of trafficking from Ethiopia.

The war between Ethiopia and Eritrea broke out in May 1998. Although I still do not know who and why armed men murdered my husband and threw him into the sea, my two brothers were also killed when they were forced to fight in the war. My other brother died after an unsuccessful operation. Then they forced me to cook for the soldiers on the frontlines for three years. I tried to tell them that I was too old to do this work, but they wouldn't listen.

When things became unbearable, I knew the only way out was to escape. After escaping, I went into hiding with my relatives. I learned of an opportunity to work as a babysitter in the United States, from the uncle of my trafficker. I thought he was trying to help me escape my desperate situation and provide for my child.

I met with the uncle twice and we discussed the work arrangements. At no time in either conversation did he mention that housework would be part of the job. He said that I would be treated well and that I would have a good life in the United States. I was told that it would be a three-year contract and that I would be paid \$300 a month for the first two years and that I would get a raise in the third year. We agreed upon these terms for the contract. I informed him that I loved my children, was competent in childcare and would accept the job as the children's nanny. The uncle arranged for me to get a tourist visa to come to the United States and a plane ticket.



Judge Carmen Kcomt

On the morning I arrived, my trafficker confiscated my passport and all my immigration documents. She also took all my gold jewelry, the only possessions of value that I had brought with me. My trafficker claimed that she needed to hold on to my possessions for me because her home was in a remote area with earthquakes. She told me I was not supposed to keep any cash with me, so she would not pay me in cash. I begged her many times to return my jewelry and documents to me. She would either refuse or ignore my requests.

On my first day in California, my trafficker informed me that in addition to caring for her two children, my job duties were to clean the entire interior of the three-bedroom home, prepare meals for the family, wash the dishes, maintain their front yard and large backyard garden and to do all the laundry for the whole family. Additionally, every Sunday I had to wash the family's two cars. My trafficker ordered me to do the family's laundry after 11 p.m. because she said washing clothes late at night would cut down on their electricity bill.

I had to get up at 5 a.m., seven days a week, to start my work. Usually I did not eat any dinner because I had no appetite from the stress I was experiencing. Following the family's dinner, I had to wash the dishes, continue cleaning the house until about 10:30 p.m. On evenings when my trafficker had laundry for me to wash, I had to stay up until 1 a.m. to get it finished.

On other evenings I had to go to bed at 11 p.m. I would be exhausted at the end of the day. My back hurt and I had bad headaches. Late at night when I stopped working, the pain in my back, my knees and my body grew worse. Usually I was so uncom-

fortable from all the hard work and my stress from being so isolated that I could not sleep at night. I would lie there awake, worrying.

My trafficker never gave me a day off. My trafficker did not allow me to communicate with anyone outside the home. I became increasingly isolated within the home. This family was my only contact with the outside world. I had no money. I spoke no English and did not know anyone. I did not know where to go even if I tried to escape. I rarely saw any visitors come to the house. The only thing I would hear from the outside was the opening of the garage door.

The work was physically tiring and emotionally draining and I was not getting enough sleep. My back hurt almost always because the work I had to do was so strenuous. Once when I was suffering excruciating back pain, I pleaded with my trafficker to let me see a doctor. Instead of allowing me to get treatment, she warned me that when she came back from a trip she was planning she expected to see all the windows and the carpet cleaned.

During my third year my trafficker did not pay me for my work at all. She told me she was tired of finding people to deliver the money to my child in Eritrea. She refused to pay me directly in cash, using the excuse that there might be an earthquake. I knew that the real reason she did not want to pay me directly and return my passport and documents to me was that I would try to escape.

I became more and more afraid of my trafficker and lived in a constant state of fear and isolation. My trafficker controlled my life completely. She treated me as something less than a human being. I was not allowed to make any decisions for myself and was subject to constant humiliation, ridicule and intimidation.

I could not handle this enormous amount of work any longer. I was exhausted and tormented. I became increasingly depressed. I felt I had no way out. I was completely disturbed. I felt I was going to lose my mind. I could not remember things. I felt dizzy, had headaches, could not eat, could not sleep and cried during the day and at night.

Charles Song, U.S.



Charles Song is the founder and director of the Legal Advocacy Program at the Coalition to Abolish Slavery and Trafficking (CAST). He has also served as a human rights fellow and staff attorney at the Center for Human Rights and Constitutional Law.

That was my client's testimony, so I'm happy to answer your questions after my testimony.

My name is Charles Song. I'm the legal director at the Coalition to Abolish Slavery and Trafficking. I want to thank the distinguished jurists, and I want to thank all the distinguished human rights activists that we have in the audience, and most importantly, all the extraordinary survivors who have come before me and spoken here. I'm truly humbled to speak on the same stage as these individuals.

I know you see a slightly overweight Korean man in front of you today, but please try to envision that I am trying to speak on behalf of hundreds, perhaps thousands, of survivors of trafficking here in the United States. When I was sitting in the background listening to some of these horrible stories, I was thinking, "Gosh, how can it get any worse? It doesn't get any worse." In some cases, it does get worse.

To put my comments into context, I would like to introduce my organization, the Coalition to Abolish Slavery and Trafficking. The Coalition to Abolish Slavery and Trafficking was set up in the aftermath of the El Monte slave shop case in 1995. Many of you may have heard of that case. Seventy-two Thai workers were enslaved in an apartment complex that had essentially been turned into a slave compound in a typical American suburb in

Los Angeles. In fact, the sign in front of the compound read, “Welcome to Friendly El Monte.” Right behind that sign, around the complex, was a type of razor wire that you would see in concentration camps or federal prisons, etc.

One of the things that happened after that case was that the government didn't know what to do with 72 Thai workers who were monolingual and didn't have any friends or family. So what did they do? They put them in jail. That's the human rights thing to do, right, when you don't know what to do with victims of crimes? Many of the NGO activists obviously fought very hard to get them out of detention, get them out of jail, and to treat them like the victims of crimes that they were. Our founder realized at that time that the NGO community didn't have the resources to properly protect and provide services to these survivors of trafficking, and that's how CAST was founded.

I have a huge long list of requests for this distinguished panel, but I'll limit it to just a few. One, and I may be mistaken about this and if I am please correct me, but it's my understanding that human trafficking would only be a crime against humanity or a war crime in the context of a conflict or a war situation.

Goldstone: A crime against humanity need have no connection with war. It has to be directed against a civilian population. It wouldn't be a crime against humanity if there's trafficking in small numbers, but if it was against a civilian population, then it could be a crime against humanity.

Song: Then my first request has already been established. There's no problem there. But I have a second request – actually a number of things, but I don't want to request too much of this panel. The United States recently ratified the Convention on Organized Crime and the Protocol on Trafficking. One thing that I found abhorrent about the United States' policy – and there's some decent United States policy regarding human trafficking – is that they require victims of trafficking, survivors of trafficking, to cooperate with law enforcement or they're denied all benefits and could be arrested, detained and jailed if they refuse to cooperate with law enforcement.

My key point in my remarks is that there are numerous human rights violations occurring to women in these conflict situations, but even if they

are able to survive these situations, some of them are brought to the United States – we're the land of the free, the home of the Statue of Liberty, we have the Declaration of Independence, etc. And most of my clients feel like they're being rescued, they're being saved, they have this amazing opportunity to come to the United States. But what I'd like to make clear is that a number of human rights violations continue even once they get here: by traffickers, by criminals and then in the worst case scenario, by the state itself.

For example, in one of the worst cases I experienced, I have a client who was enslaved for five years, beginning when she was 16 years of age. Unfortunately, she was on the premises when a violent crime occurred. The actual criminals pointed the finger to my client; she was unable to defend herself because she was unable to speak the language. She was wrongfully convicted of the crime and spent the next 22 years in state prison for that wrongful conviction.

The story doesn't end there. Once she was released from prison after doing 22 years for a crime she did not commit, the immigration service picked her up and said, “You are now deportable from the

The story doesn't end there. Once she was released from prison after doing 22 years for a crime she did not commit, the immigration service picked her up and said, 'You are now deportable from the United States because of your criminal conviction.'

United States because of your criminal conviction.” These are the different ways that trafficking victims can be convicted and re-victimized once they are here in the United States.

In the United States it appears that trafficking is going down, according to the government. In 1999, you may be familiar, the CIA estimated that 50,000 people were trafficked into the United States each year. Most recently, they're estimating that it's closer to 15,000, 14,500, 17,500, etc. The statistics make no sense to me at all because if anything, I'm seeing more trafficking into the United States.

According to the United States government, it's going down.

What we're seeing here in the Los Angeles area is that people are trafficked into any kind of work you can imagine: from domestic work to restaurant work to hotels; we've had teachers trafficked into the United States, children in boys' choirs, and obviously for prostitution purposes we've had a number of people trafficked here into the United States. Women and children from conflict areas are being trafficked into the United States, as well as men. They are coming from all different age groups. We're predominantly seeing most women with very little education, from rural areas, and some of them are voluntarily migrating here – but a number of my clients have essentially said that they had no choice.

For example, in one of my cases of a woman, she's expressed to me that she had absolutely no choice in coming here. She had no way to support her daughter in her home country. She had to take this opportunity. She was wanted by the government, wasn't able to find a job in her home country, and it was really a matter of survival in that she really had no choice but to come here. A lot of people say that trafficking victims are voluntary migrants, but I would beg to differ that in many cases, they're not voluntary migrants.

Who are the people trafficking people into the United States and abusing them and exploiting them in the United States? We have family members who are involved in trafficking cases. I've had a case of a mother who actually sold her own children into a trafficking operation. We've had government officials; very wealthy, influential people in their home countries; diplomats – it runs the whole range and it includes organized crime. The victims that we've been seeing here in the United States are recruited in a number of different ways, some through family members, some through friends, some through newspaper ads, but just about anywhere you can imagine, people are trafficked and recruited into the United States.

Now, being an American and having the government of the United States, I rarely have to admit that the U.S. government does anything good or anything human rights-related, but there are a few things. When they do something well I do try to admit it. I'm glad that they've ratified the Convention on Organized Crime and the Trafficking Protocol.

They've also passed a Trafficking Victims Protection Act (TVPA) in 2000, which I'm not sure you're familiar with, but I'll talk about it a little bit with the time I have remaining. The TVPA is essentially supposed to protect – and I think the title of the act is actually very instructive. It's called the Trafficking Victims Protection Act. It's not the Traffickers Prosecution Act, and it's something that we try to highlight. Congress intended the TVPA to assist trafficking victims so they are not treated like criminals and illegal aliens. In some ways it's achieved those goals; in many ways it has not. We've still got a long way to go.

One of the things that I was mentioning to you before is that somebody may be a trafficking victim under the U.N. definition, under international law, but all of a sudden if he or she comes here to the United States, he or she now has to be a victim

... somebody may be a trafficking victim under ... international law, but all of a sudden if he or she comes here to the United States, he or she now has to be a victim of a severe form of trafficking to get any benefits or relief.

of a severe form of trafficking to get any benefits or relief. You may ask me, "What is a severe form of trafficking? What's a victim of a severe form of trafficking versus just a trafficking victim? Are ordinary, garden-variety trafficking victims not entitled to any relief or benefit?"

According to the TVPA and this government, they're not. A victim of a severe form of trafficking has to be a sex trafficking victim who is either coerced or through fraudulent means put into some type of commercial sexual activity, or they need to have been brought in for labor or services through force, fraud or coercion, and they have to be brought in specifically for the purpose of debt bondage, involuntary servitude or slavery. Now, in order to meet those benefits you must meet this definition of a victim of severe trafficking, or you are not eligible for any benefits whatsoever.

The definition of involuntary servitude in the United States is that somebody is coerced or forced to

work against their will under physical or legal coercion as defined by the Supreme Court case, *United States v. Kozminski*. That's involuntarily servitude; that's one of the ways that you can be classified as a victim of a severe form of trafficking.

But keeping that in mind, to get victim benefits, you need to: one, be a victim of a severe form of trafficking; two, cooperate with law enforcement; three, be here on account of the trafficking; four, face extreme and unusual hardship involving severe and unusual harm. Don't even ask me to define what that means because I'm not sure and nobody is sure.

But you have that situation where you've got a trafficking victim – most trafficking victims aren't going to have another way to adjust their status or stay here legally, or they would have done so in the first place. Had they the money, had they a lawyer, had they the ability, the grounds, they would have come here in the first place. But they didn't, so when they get caught in these trafficking situations, they have no other choice but to avail themselves of the T Visa or the U Visa, and that requires law enforcement cooperation.

So, if you've got a trafficking victim who is in detention, who is in jail, they're telling them, "Unless you cooperate with law enforcement, we're going to keep you in jail and we're going to send you back where you're going to be at the mercy of your traffickers." And traffickers often say, "If you ever escape, if you ever tell anybody about what happened while you were with me, I'm going to kill you, I'm going to kill your family." So you have the very unsavory situation where – I'm not saying it's tantamount to involuntary servitude – it's extremely coercive.

I heard a Persian man once tell me that he was given the choice – he was being investigated for terrorist activities – to either give up his permanent residency or they'd put him in jail and keep him in jail as a suspected terrorist. The man said, "Sir, you have your foot on my neck. Do I really have a choice in this matter?" That's the position many survivors of traffickers are put in now. The government is saying, "Are you going to cooperate? Do you want to cooperate with us? Or do you want to stay in jail and go back to your home country where the traffickers are and you'll be at the mercy of your traffickers?"



I see I'm out of time so I will conclude there. Thank you very much.

Bensouda: What are you requesting from us?

Song: I would like the Trafficking Protocol or other international human rights agreements interpreted in such a fashion where it would be inconsistent with forcing a victim of a crime, or coercing a victim of trafficking, to have to cooperate with law enforcement in order to avail themselves of any benefits. These benefits should be granted simply and purely on humanitarian grounds. I believe that is within the language of the protocol, but now we just need it interpreted that way and it needs to state that.

Unfortunately, the protection provisions of the protocol are not mandatory, are couched in "should" and "to the extent possible"-type language. If you could write that it is possible and this should happen, I think that would be a very powerful tool for us here in the United States to make sure that this isn't happening here, and so that more survivors can come forward. This is the main impediment for survivors coming forward and getting benefits – they're terrified of going to the police. They're afraid that their families will be killed and they're afraid of what will happen to them if they cooperate with law enforcement.

Ezeilo: Are you aware that the United States has not ratified the Convention on the Elimination of All Forms of Discrimination against Women, and they have yet to ratify the United Nations Convention on the Rights of the Child which clearly prohibits issues around trafficking, particularly promoting respect for human rights of those trafficked, including even the Rome Statute? They have yet to ratify that, which will be able to bring this within the defi-

inition of crimes against humanity. Bearing in mind all of this, where do you think, within the United States domestic system, that the victims can get redress? Can they get effective remedies within the United States? They can't be brought before the international treaty bodies because they have not ratified these instruments I've mentioned.

Song: My answer would be that some can receive adequate remedies in the United States, but the vast majority and far too many still cannot. For example, if you have a fairly high-profile case – maybe a sex trafficking case involving a good number of people – it's a very good possibility that the U.S. attorney, the federal prosecutors, will investigate and prosecute your case. But if you're my client and you're asking, "Where is the trafficker?" – she's at large and free in the community, going about life as she was before.

If you're a domestic worker who is enslaved and you're essentially the only witness, partly because the trafficker did such a good job of enslaving you and denying your very existence in this world, the odds are you are not going to get remedies. We were able to get our client in this situation a T Visa, so there is justice in that, in that she has her safety. Her daughter is still in her home country, and because she is over the age limit, we're not able to bring her in on a T Visa, so we're looking for other ways to help her daughter, who the government is now trying to force into some type of conscriptive service as well. We've also filed a civil lawsuit on behalf of this client, so there are ways that we can try to get remedies for some of them. But it's far too restrictive in my view, and it needs to be broadened and expanded.

Judges: Thank you.

Demand for Accountability

- Amendment of the Convention on Organized Crime and the Protocol on Trafficking and other international human rights agreements that would not mandate cooperation with law enforcement by coerced victims of trafficking in order for the victim to receive any benefits or remedies.

Lilia Velasquez, U.S.



Lilia Velasquez, an attorney in private practice, has been a certified specialist in immigration and nationality law since 1991. She is the consulting attorney in immigration law for the Mexican Consulate in San Diego and a faculty member at California Western School of Law.

Good morning, distinguished panel. Good morning, people in attendance. My name is Lilia Velasquez and I am an immigration specialist. Unfortunately, I only have nine minutes which is really unfair because I have so many things to say. I want to echo some of the sentiments my colleague, Charles Song, mentioned to you.

We have to first of all realize that the United States is at the helm of the movement in trying to fight against trafficking. It is the United States that issues the Trafficking-in-Persons Report every year. It is the United States that enforces sanctions on countries that do not make any efforts to combat trafficking. Therefore, we are the leader, so to speak, in this particular area. Yet, we are shocked to see how the U.S. system treats the victims of trafficking.

I'm not going to spend too much time on the U.S. because I want to give you the international perspective. But number one, victims of trafficking are arrested. When people from other parts of the world come to educate themselves as to how we handle victims of trafficking and the protections and the system of law we have in place, they are appalled that we detain victims of trafficking. The question is, "How do we expect them to cooperate? How do we expect them to be willing witnesses if, in fact, they are going to be detained?" So that is an issue of concern when you consider

When people from other parts of the world come to educate themselves as to how we handle victims of trafficking ... they are appalled that we detain victims of trafficking.

that we are talking about people who have been victimized and now they are being re-victimized by the system of justice that we have.

A second issue, and I'll be very brief, has to do with what my colleague alluded to, which is the standard to qualify for benefits. There again we have very serious restrictions because if you were trafficked into the United States but they rescue you before you engage in trafficking activities, forced prostitution, then you do not qualify for benefits. The issue then becomes, if the victim is already here in our territory, what are we to do with them if they don't meet this very stringent criteria imposed by the U.S. system?

I think that it is important to recognize that tremendous efforts have been made at the international level in the fight against trafficking, forced prostitution and forced labor. Yet, despite all the significant gains, the work that needs to be done when you look at the statistics – in the United States we have 50,000 (they keep lowering the number, I don't know who's doing the counting in the United States, but even if there's 40,000 or 25,000) – clearly the level of prosecution against traffickers and the level of protection to victims, you see this great disparity.

Thousands upon thousands of victims and yet only a handful of those victims get certified for benefits. In the United States in four years, since the [Trafficking Victims Protection] Act went into effect in 2000, only 470-plus principal victims have been certified by the U.S., with another 400 derivative dependents because their children or spouses also qualified for those benefits. So we can see that the numbers are just mind-blowing because you have a huge number of victims all over the world, yet very few victims are rescued and given protection in any given country, including the United States, the wealthiest country with unlimited resources. Even in this great land of opportunity, even in this great land of civil liberties

and human rights protection, we don't do justice to the victims.

As I mentioned, we defenders and advocates of anti-trafficking, we do applaud the efforts of the international community. We do have to acknowledge the efforts they have made. For example, the Republic of Korea, in response to a petition by a North Korean woman, passed two significant anti-prostitution and anti-trafficking laws in 2003 aimed at combating commercial sexual exploitation of women and girls. So this has resulted in Korea being able to rescue victims and prosecute traffickers. We have to be mindful of the fact that we didn't have those gains before, now we do.

Mali, the Philippines, Portugal, the Czech Republic, Estonia, Singapore, Morocco – all of those countries have also enacted legislation and have assured more protection to victims of trafficking. That is significant and of course we're happy for that. The Trafficking-in-Persons Office in the United States supported more than 50 anti-trafficking programs in 2004 and provided over \$5 million for anti-trafficking initiatives. So again, the United States provided resources to other countries to combat trafficking.

At the grassroots level, we also have tremendous efforts by not just NGOs, but also individuals in their own capacity working day and night advising, helping, assisting, rehabilitating, reintegrating victims of trafficking. We have to acknowledge that success. In India, Saudi Arabia, Russia, they use the media. There was one country that actually produced a major movie to be shown in mainstream theaters concerning the issue of trafficking. It is the human rights issue of the century. It is now on everyone's radar. Everybody knows about trafficking, even in the United States. There are no boundaries when it comes to trafficking.

When we consider the number of people that are victims, let's look at what happened in 2003. There were 7,992 prosecutions and only a handful of convictions. In 2004, there were 6,885 prosecutions, but only 3,025 convictions. Why? Why is it so difficult to convict traffickers? Because that is really what we want: We already have a lot to do with the victims, but what about the traffickers? The laws are very strict in many countries, not necessarily in the United States.

In the United States the problem we have is the

ignorance of law enforcement officials who are clueless to the fact we have a trafficking problem in this country. Even when you talk to them and you go up to them in conferences, they say, "What trafficking problem?" But in other countries, it's the corruption and the collusion of traffickers with the police that sometimes impedes the efforts of those agencies to prosecute them.

I want to spend a few minutes about the root causes of trafficking. We deal always on the end of the victim, on the end of having to protect the victim, a victim where the damage has already been done. The root causes of course are violation of human rights and the right to work, war, displacement, migration, labor – people migrate all over the world – health issues, rape, poverty, famine. All those are the root causes of trafficking.

Although we are encouraging governments to prosecute and to protect victims, we cannot overlook the importance and significance of actually attacking the roots of the problem. So as long as we continue to have war and poverty and migration and rape and all those human rights violations, whatever the reason – whether it's a time of conflict or during peacetime – trafficking will continue to exist.

We are not making a dent in protecting victims, and we're not making a dent in prosecuting traffickers. Are we just going full circle again? That's something that we really need to be concerned about. We need to prevent the victimization rather than dealing with the rescue, removal and reintegration. It is too expensive to prosecute. It is too expensive to rehabilitate a victim.

In the United States, and I'm sure this is true of other countries as well, just to give you an idea of who is involved when it comes to a victim: the federal judge, a prosecutor, defense attorneys for the traffickers, immigration investigators, the refugee resettlement office, the civil rights division, the immigration office that processes the T Visa, Catholic charities who provide financial and health assistance, an interpreter, a U.S. Marshall who deals with bond issues and custody, on and on and on.

We are looking at the three P's: prosecution, prevention, protection. Now we have the three R's: rescue, removal and reintegration. We need to be paying more attention to the three P's. We need to invest more time and energy in the three P's,

which is prevention of the problem to begin with.

This year the U.N. Commission on the Status of Women highlighted the need for more action in education by adopting a U.N. resolution on eliminating the demand for trafficked women and girls. We need to support this resolution. It's always about supply and demand. It is a billion dollar industry. It is organized crime. If we cannot fight the war on drugs, which for many countries is a priority, are we ever going to win the war on trafficking? Thank you very much.

Ezeilo: You were focusing on the three P's. I think now it's getting to even five P's, also talking about promotion of the human rights of people who are trafficked, so that they are not treated as criminals. There is so much emphasis – even if you are looking at the U.N. Protocol on Organized Crime and Trafficking-in-Persons, especially women and children, you find that there is not enough protection for the human rights, particularly to avoid doubly victimizing them. And then there is the issue of punishment, because there is already a problem with regard to the number of cases prosecuted. We need to have appropriate and adequate punishment for those who are convicted. And then importantly, the two R's, we must also meet them: rehabilitative and reintegrative measures. Do you think we are doing enough nationally within the United States and then internationally?

Velasquez: Absolutely not. We're not making a dent. We should be mindful of the gains, but given the amount of victims and the amount of people who receive benefits and traffickers who get convicted, we're not making a dent. And this is very frustrating for me because in a country where the rule of law is respected, then you should see what it's like when you go against those defense attorneys who are very seriously representing their clients, who are the criminals. Many times, after months and months of investigation, they drop the charges and the traffickers go free.

On the issue of rehabilitation, this is perhaps my greatest frustration when we deal with clients who will be damaged forever. We've already heard testimony today, very compelling, very poignant, and it affected me deeply because it is the type of women I deal with on a regular basis. We will never make them whole. We can give them health protection, we can give them counseling for years and years – those women will be damaged

forever, and I see them like ghosts coming into my office with long faces. They're already here and they're safe, but the damage has been done.

Bensouda: You say that many are prosecuted but few are convicted. Is it the lack of evidence? What is responsible for the few convictions?

Velasquez: I think it's a variety of things. I'm going to be very candid with you because I have spoken to prosecutors who tell me that the politics in the office here in the United States is such that on the one hand, we're giving millions of dollars to other countries to prevent and prosecute, but when it comes to home, it is not a priority. Even a federal official said one time that the victims are here, but

Even a federal official said one time that the victims are here, but we're not looking for them.

we're not looking for them. Therefore, if you are a U.S. attorney here in San Diego, and you have thousands of cases to prosecute and investigate, you're going to go for the drug traffickers and the cases of the victims of trafficking are not really serious. The idea has not sunken in yet as to the severity and the damage. If they will always be putting it at the bottom of the totem pole for prosecution purposes, then the statistics will continue to be abysmal.

Judges: Thank you.

Demands for Accountability

- Support the adoption of a U.N. resolution on eliminating the demand for trafficked women and girls.

REFUGEES AND IMMIGRANTS TO THE UNITED STATES

Lilia Velasquez, U.S.

Good afternoon, distinguished audience, distinguished panel, may it please the court. Once again, I have been instructed to finish my presentation in record time. I'm beginning to feel persecuted – too much of a coincidence.

I wish to express my gratitude for holding this important hearing, a Global Women's Court of Accountability in the United States. You have heard testimony from victims of human rights violations and from legal scholars, and of the human rights violations in many countries: Iraq, Afghanistan, the Philippines, Tunisia, Nigeria, Sri Lanka, Guatemala, Cambodia, Bosnia, among others. Now I would like to take this opportunity to tell you about the human rights violations committed by the United States of America, in the United States and abroad.

All of you are mindful that after 9/11, the rules changed. There should be no question that the civil liberties and due process rights of non-citizens changed dramatically after the attacks of 9/11. We are now operating under a system that is called the "new normal": Things that were not allowed before are now considered normal. The normal is defined by the loss of particular freedoms for some, and worse, detachment from the rule of law as a whole.

After the attacks of 9/11, the U.S. government approved and implemented a series of policies to deter terrorism and protect national security. None of us can dispute the need and the right that countries have to secure their borders. However, it should not come at the expense of civil liberties. Suddenly the war on terrorism became a war against immigrants and refugees and anyone who looked foreign. The U.S. PATRIOT Act, which was approved in record time, authorized the detention of persons based on their racial profile. It was painful for me as an advocate, as a defender of immigrants, to get phone calls from my clients or their relatives telling me that they had been arrested solely based on who they were, what their names were, how they looked, what their religion was.



Ezeilo raises questions regarding immigration

So, today, racial profiling is no longer a dirty word. It has become acceptable to detain and interrogate people solely based on their appearance. Even naturalized U.S. citizens who had emigrated from certain countries felt under attack just because of how they looked. We implemented a program where males of certain nationalities had to register in the U.S. or else they would be prosecuted. These provisions applied to persons who were born in mostly the Arab and Muslim countries, regardless of their citizenship.

To give you an example, there were many people from Canada who had become naturalized Canadian citizens, but who were born in Iraq or Iran, in one of the sensitive countries, and even though they had not been to their countries probably since they were babies and they had no connections to their homelands and were now citizens of another country, they also had to register. Many of them were arrested because they failed to do so. We are talking about doctors and lawyers and scientists who suffer the humiliation of being arrested simply because of where they were born.

Fortunately, this compulsory program has ended. Now instead what we have is the U.S.-VISIT Program, which is an entry/exit system. Males of a certain nationality to this day continue to have to register when they enter the United States and when they depart.

Something that is very close to home and that af-

facts the rights of my clients on a daily basis is the fact that the Bush administration also implemented what is called “closed deportation proceedings.” In other words, a country that maintains respect for the rule of law, transparency, suddenly decided it was going to close the doors.

This created a lot of friction in the courts. Some courts ruled that it was constitutional to have closed hearings, that it was not a violation of the First Amendment. Other courts held that it was indeed a violation of the First Amendment and freedom of the press. In one ruling, the court stated, “Democracies die behind closed doors.” I regret to tell you that that ruling by the Sixth Circuit Court of Appeals has once again been reversed, so we’re back to the beginning and closed hearings are acceptable.

Asylum applicants – refugees fleeing persecution from other countries – have also suffered tremendously. We have spoken about the victims of trafficking and how they are victimized by traffickers, and when they come to the United States they are re-victimized. The same thing has happened to bona fide refugee and asylum applicants. They have become unwelcome, they have become a threat, they are perceived as potential terrorists.

This attitude has permeated all levels of society, from ordinary citizens on the street, to law enforcement, to immigration judges. Last month, a court – just to give you an idea of the stress that refugees are under and also immigration advocates – had a ruling that really resonated with all of us. I will read you very briefly a portion of that ruling.

The Court of Appeals said:

Time and time again we have cautioned immigration judges against making humiliating remarks during immigration proceedings. Three times this year, we have had to admonish immigration judges who fail to treat asylum applicants in the courtroom with respect and consideration. Also this year, we have described an immigration judge’s opinion as ‘crude’ and ‘cruel,’ and noted its hostile tone and sometimes extraordinarily abusive, bullying and extremely insensitive behavior.

We’re talking about the judges, the ones responsible to do justice. The decision of the court

concluded with:

A disturbing pattern of immigration judges’ misconduct has emerged, notwithstanding the fact that some of our sister courts have repeatedly echoed the same concerns.

It is something very real that happens every day in immigration proceedings. Some judges call it “compassion fatigue”: “We’re tired of immigrants. We’re tired of refugees. We don’t have the resources.” Therefore, regardless of the fact that the refugee population continues to explode and increase all over the world, we don’t want them knocking on our doors. If immigration judges –

If immigration judges – those entrusted with the responsibility to do justice – treat asylum applicants with cruelty, humiliation and disrespect, what do you think happens when law enforcement and prosecutors have to deal with those victims? The treatment is even worse.

those entrusted with the responsibility to do justice – treat asylum applicants with cruelty, humiliation and disrespect, what do you think happens when law enforcement and prosecutors have to deal with those victims? The treatment is even worse.

As if the misconduct by our judges was not enough, now we’re facing new restrictions. It’s called the REAL ID Act. It’s very long, but there are a lot of immigration provisions that are very important and very significant, short-term and long-term,

The REAL ID Act will make asylum seekers even more vulnerable to arbitrary treatment and possible denial of their asylum claims.

for immigrants and refugees. The REAL ID Act will make asylum seekers even more vulnerable to arbitrary treatment and possible denial of their asylum claims. The standards are now more stringent;

it is more difficult now to get asylum. It allows the judges the right to deny a claim if they don't find the testimony of the applicant to be credible, or if the applicant cannot corroborate their asylum claim.

Now, I ask you, how many refugees fleeing their

... how many refugees fleeing their homeland, fleeing persecution, can leave their homes with a suitcase packed with corroborating evidence?

homeland, fleeing persecution, can leave their homes with a suitcase packed with corroborating evidence? And therefore, again, the message is strong: We are going to limit the number of refugees who will be granted status in the United States. This new evidentiary standard, coupled with the cruel and insensitive behavior by the judges, is going to be fatal for asylum applicants. All the judge has to do is say, "I don't believe you," and deny the case.

A woman from Senegal who fled certain genital mutilation will be denied if she cannot provide documents proving the operation was about to occur. Corroboration. Where are we going to get it? A battered immigrant woman who testified that she came to the U.S. in May of 2002, when in fact her documents show she entered in late April of 2002, may be denied asylum because of that discrepancy, because she lacks credibility because she doesn't know her dates, because she cannot get the chronology of what happened to her straight. The impatience of those judges and the insensitivity they show is very painful.

Another major change in the asylum law is that now applicants for asylum have to demonstrate that there is a central motive for persecution. She cannot just say, "I was persecuted because of my political opinion or because of my religion." You have to pick a central reason. You cannot have mixed motives.

Therefore, picture the following scenario: a Tibetan woman who was raped by government officials and exhibited a detached affect during her asylum hearing will be denied asylum. If you are traumatized or suffering from post-traumatic stress

syndrome, you detach yourself from reality. And therefore, this detached behavior will now work against the claim of that applicant.

What does this have to do with the rest of the world, with the international community? We are the traditional country of asylum refugee resettlement. People look up to the United States. Everyone in this country, including myself, is an immigrant. Yet, the current restrictions on asylum claimants in the U.S. will not only have repercussions on asylum applicants here, but also in other countries. Opportunistic governments have relied cynically on the U.S. war on terrorism as the basis for internal repression of domestic opponents.

It has also encouraged other countries to disregard domestic and international law, and unfortunately, immigrants and refugees are bearing the brunt of these new policies. Countries from Australia to France treat immigrants, including refugees seeking asylum, as security risks. The message that we're sending to the world is: It is OK to turn them away; it is OK to deny their claims. Where are they going to go? Who is going to protect them? That is the question we have to ask, and that is the dilemma that we face, those of us who assist refugees, especially women – the majority of refugees are women. The pain, the restrictions, the denials, the cruelty fall on the shoulders of women again and again.

Overseas refugees also have to pay for what happened on 9/11. Our security concerns debilitated our refugee resettlement program. Every year, like most of the traditional resettlement countries, the United States, with the approval of the president, designates how many refugees will be allowed to come to our country to resettle. At times it has been 200,000. It's been coming down and coming down.

For the last three years it's been 70,000, yet of the 70,000 refugees who were allowed to resettle in 2002, only 27,000 were able to come in. Why? Security concerns. In 2003, 70,000 were approved; only 28,000 were able to come in. Why? Security concerns. The numbers went up in 2004: out of the 70,000, over 50,000 were able to come. So the numbers increased. But clearly, other countries of resettlement know what the United States is doing and they're following suit. We are the model for the world. So, as you can see this is of great concern for refugees who are displaced and continue to be

displaced all over the world.

Another group that has suffered because of 9/11, and whose civil liberties were tremendously impacted, is, again, the Arabs and the Muslims. Right after 9/11, the United States government arrested over 1,200 people, held them incommunicado. In fact, for the longest time, we did not know who was detained. It was just unheard of: In the United States of America, they detained 1,200 people and nobody knew who they were.

It was a lawsuit brought by the American Civil Liberties Union that finally revealed some of those names. If they were incommunicado, how could they get a lawyer? How could they get out without representation? How could they get their day in court, adequate defense, due process, all of those rights that are so fundamental in our system of justice? Suddenly, a father never came home. A son never came home. A relative never came home. They were secretly detained.

Interestingly enough, most of those detainees have now been released without charges. In Guantánamo, detainees had no access to counsel. And although many of them have been released, they never had access to counsel. We speak over and over about access to justice. We have the laws, we have the conventions, international covenants, regional covenants, all kinds of agreements – a long list. But if you don't have access to the court, if you cannot exercise those rights, what good are they?

It is interesting that things continue to get worse. Last week the U.S. Senate adopted, without a hearing and with little debate, a proposal to eliminate habeas corpus relief for Guantánamo detainees, denying them access to federal courts. Fortunately, the president of the Bar Association nationwide stated the following:

Throughout history, it has been our nation's commitment to basic principles of justice which has allowed us to maintain the high moral ground in the world. Our influence in the world is directly affected by our actions with respect to those we detain. The prisoners at Guantánamo have been held there largely incommunicado for four years. That fact alone offends our heritage of due process and fairness. The rule of habeas corpus was developed pre-



Lilia Velasquez before the panel of judges

cisely to prevent the prolonged detention of individuals without charge. To eliminate this right will be shocking to our nation.

I don't need to give you the details of the violations at the prison in Abu Ghraib. Fortunately, luckily, the whole world knows and it has been exposed. It was our government who was the one instrumental in those violations. Certainly the violations were committed by the lower-ranking soldiers, but who gave them authority? Who signed off on those torture memos? It was the higher-ups in government. While the United States has prosecuted some of those soldiers, the sentences are very, very minimal. You kill someone, you get one year. Well, if you're a civilian and you kill someone here in the United States, you don't get a one-year sentence; of course not. Instead of treating them more harshly, the soldiers are being treated with more leniency, and that is very troublesome. That is certainly unfair.

I say this because I have been doing this for 25 years and I think it wears you out when you have seen the changes in policy – immigration policy, foreign policy – affect the lives of people. The United States, I can say in all fairness, is considered sanctions-central. We sanction everyone. We sanction the countries that don't do anything to combat trafficking. In fact, we have created a tier list: tier one, tier two, watch list, tier three. We categorize. Why? We are monitoring their efforts to fight against trafficking.

Who monitors the U.S.? Who sanctions the U.S.? Who prosecutes the U.S. military or the perpetrators of human rights violations? It begs the question that resonates all over the world: Is the United

States government above the law? Will anyone dare to stand up against the U.S. government and prosecute not the lower-ranking officials or military people, but the people who gave the orders? Are those war crimes? Is Donald Rumsfeld ever going to be prosecuted or detained in some country, perhaps when he goes on vacation, like Augusto Pinochet? One can only hope.

The United States – and I only have two minutes and I'm sorry I have to rush – imposes sanctions and they also publish every year what is called the Country Human Rights Report. This is what we are recording; we have documented year by year what other countries are doing: their record on human rights, their treatment of women, how women receive justice in the judicial system, etc. But there are no reports of the human rights violations of the United States.

So who is going to do it? Do I have to do it? The U.S. has been denounced. The U.S. is not very popular right now around the world. But who is going to finally take the active step to say, "Enough. You also have to be prosecuted for your crimes"? How can the U.S. condemn the crimes committed by other nations or states when it engages in the same violations it condemns? Hypocrisy. These violations undermine our own credibility. How can we with a straight face tell other nations, "You are doing wrong, you better clean up your act"? Who points the finger at the United States to clean up its act? The U.S. promotes the rule of law all over the world, but how hypocritical that we engage in the same violations as other countries that are even less democratic or even repressive regimes.

This tribunal has heard now the testimonies of victims of grotesque violations of human rights. You've heard from legal scholars; you've heard from legal specialists, like myself, who are in the trenches defending those people whose rights are abused. Complete justice can never be done. There's no such thing, I say to my clients. We cannot undo the rapes, the killings, the brutality, the violations of human rights people have already suffered.

I was impressed by the testimony of the Kurdish woman from Iraq who stated that Saddam Hussein is not suffering for the crimes he committed. He's in a nice cell, he has a whole team of lawyers – unlike the people in Guantánamo, by the way – he's being fed, he has medical attention, and even

if he's tried and convicted, nothing will compensate them.

Based on all the testimony this court has heard, based on all the international and regional instruments you have been handed previously, based on the indictment that has been handed to you, I ask that all perpetrators of human rights violations be brought to justice, including and especially, the United States government and its officials and civilians.

Ezeilo: Thank you. I just have a short question and comment. Of course, it's a problem really not only to monitor but also to hold the accountability issue with regard to the United States because it's such a powerful, sovereign country that is actually monitoring the rest of the world unilaterally. We have seen it go to war unilaterally, so it appears to be above the United Nations. But there have been responses such as before the U.N. Commission on Human Rights. I know some groups even from the U.S. have come before the commission, they've documented violations of human rights before the commission, and I think the rest of the world is reacting this way.

But I'm wondering in the United Nations whether there has been any precedent with regard to this issue of immigration, related cases of refugees, whether there has been communication to the UNHCR or a particular U.N. treaty body. I know the United States has ratified the International Covenant on Civil and Political Rights, and that may be one of the best ways to hold them accountable by reporting to that treaty-monitoring body. I don't know if that's been explored; I'd be interested to hear from the other justices and beyond to the audience whether that has been explored.

Velasquez: Well, it has. The UNHCR has been very instrumental in helping us move along. It's interesting that it's never the U.S. that takes the initiative. It's the UNHCR that published the guidelines for refugee applications of children, the gender-based guidelines of applications of refugee women. It's always after Canada and some other countries in the Western world have already adopted such measures that the U.S. feels the tremendous pressure, in addition to the pressure placed by the private bar, by immigration associations and human rights activists, that they need to comply with U.N. standards.

Ironically, there are many countries, maybe eight, that have already accepted brutal domestic violence as grounds of persecution. Not the U.S. But that's not surprising. So, locally we're doing a lot. But it is painful. It is almost like the damage is done, they've changed the rules. Eventually something reaches the Supreme Court, but by then it's too late.

Kcomt: Very quickly because of the time: Lilia, excellent presentation. I want to ask you something. Can the state bar association, or immigration lawyer organizations, do something against the immigration judges for their very nasty behavior?

Velasquez: It has been a struggle. And it takes a lot of bad behavior and complaints; it takes decisions, like the one I cited to you, by the courts of appeals so the judges can take notice of the behavior, especially if it's consistent of certain judges who don't believe in asylum law, who basically walk in with a negative presumption. They're not going to believe your clients because of course they're lying, and therefore, they're going to be nasty throughout the hearing. So, we do, and sometimes we don't get justice until we get to the court of appeals. It's sad that this happens, because unlike many other countries, like the United Kingdom, asylum applicants who apply here do not get any benefits, they cannot get a work permit. They really have to live by their own devices, and this is very harmful. But to remove an immigration judge from the bench takes an act of Congress.

Judges: Thank you.

INVISIBILITY OF WOMEN IN PEACE AND SECURITY PROCESSES

Mary Ann Arnado, Philippines



Mary Ann Arnado is a lawyer and the secretary-general of the Mindanao Peoples' Caucus, a grassroots network of the Bangsamoro, indigenous peoples and Christian settlers in Mindanao in the Philippines, and the deputy director of the Initiatives for International Dialogue. She was a Woman PeaceMaker at the IPJ in 2005.

With the permission of the honorable court, I would like to ask all the women here to please stand.

IN FOCUS: Mindanao

Mindanao – the second largest island in the Philippines – is inhabited by three major communities: indigenous peoples; the Bangsamoro, who are largely Muslim; and Christian settlers. The contemporary violent conflict on this southern island initially began in the 1970s with the appearance of the Moro National Liberation Front (MNLF) and later the splinter group known as the Moro Islamic Liberation Front (MILF), both separatist groups seeking self-determination for the Moro people. While the MNLF signed a peace agreement with the government in 1996, past negotiations involving the MILF and successive governmental administrations have been characterized by a series of broken ceasefires and failed peace treaties. Other armed conflicts on the island – a communist insurgency dating from the late 1960s and an Islamic extremist campaign led by the Abu Sayyaf group – complicate the struggle of the Bangsamoro people.

This is our Global Women's Court of Accountability; please recognize each other. We are accountable to everyone. Please sit down. The court is now in session.

Distinguished members of this Global Women's Court of Accountability, good afternoon. I come before you here today not to add any more to the harrowing experiences that have already been said by the women survivors of gender-based crimes since we opened our session here. I think we have heard enough at this point.

While listening to their stories, one thing becomes very obvious to me: The violence and atrocities were perpetrated in a deliberate, willful and organized manner. It is not something done because men are essentially evil, trigger-happy soldiers, or simply sex maniacs. It is a deliberate military strategy emanating from a higher command responsibility. Raping a woman is probably the most devastating military weapon an army or a soldier could ever inflict toward their enemies. It is worse than all the missing weapons of destruction, which we are still searching for all over Iraq at this point.

Five years ago, on exactly Oct. 31, 2000, the United Nations Security Council issued resolution 1325, which affirms "women's central role in the prevention and resolution of conflicts and peacebuilding," and stresses "the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security and the need to increase their role in decision making with regard to conflict prevention and resolution." Big words: "equal participation," "full involvement" for women.

Allow me to bring you this afternoon to Mindanao, my home, which is in the southern part of the Philippines, so we can see whether resolution 1325, which was issued by the most powerful organ of the United Nations, has any meaning at all in the lives of women in the conflict areas.

For the past two days, we have been listening about rape, sexual slavery, forced pregnancy, disappearance, displacement and abduction. Coming from Mindanao in the southern part of the Philippines, which is probably facing one of the longest armed conflicts in the world, let me venture another form of gender violence, which I call the invisibility of women in the conflict areas.

... let me venture another form of gender violence, which I call the invisibility of women in the conflict areas.

In Mindanao, the women in the conflict areas are not seen. We have become invisible, not because of our own magic powers, but we have been made invisible by our own statistics. We are invisible in the peace and security processes, the opposite of what is mandated by U.N. Security Council Resolution 1325. Our leaders do not see us. Soldiers, rebels, religious leaders, policymakers, peacekeepers, relief agencies alike have simply forgotten or have chosen to ignore the fact that there are women in the conflict areas. In military statistics, women are not counted anymore because they are merely considered collateral damage in this war. Even in relief efforts and rehabilitation, government and humanitarian agencies have constructed several shelters after torching all the homes. But they do this without consulting the women.

The government has effectively made indigenous and Bangsamoro women in Mindanao invisible. It is an elementary principle in criminal law that there is no crime when there is no law that defines it. What crime is committed here? I would venture that it is a crime against humanity to the highest degree when you do not anymore recognize the women who make up the other half of our population.

Let me tell you concrete evidence to show that we are invisible. In one of our meetings with the senior leaders of the Moro Islamic Liberation Front, I asked a senior member of the central committee, "Why is it that there is no woman on your peace

In one of our meetings with the senior leaders of the Moro Islamic Liberation Front, I asked a senior member of the central committee, 'Why is it that there is no woman on your peace panel?' His answer was, 'We could not find one.'



A girl in Mindanao (photograph provided courtesy of IRIN)

panel?" His answer was, "We could not find one." They could not find one. We are invisible. The population in Mindanao is approximately 20 million, and they could not find a single woman being. That is one proof of our invisibility.

Another proof of our invisibility is our attempt to participate in the ceasefire-monitoring activities. There is an ongoing ceasefire agreement in Mindanao. There is a joint committee of the government and the MILF on the cessation of hostilities. We women want to participate because we want to know what the situation is: What is the security situation, where are the troop movements? Because this will mean the next evacuation of our homes. So we wanted to participate in this ceasefire committee.

We went around, we asked the members and we appealed that we should be allowed to sit in their meetings. But the ceasefire committee, which is largely composed of the field commanders of both MILF and the government military, simply said, "No, you cannot understand what we are talking about here. We are talking about military language, we are talking about military hardware, we are talking about which bombs will fall here, what kind of bombs exploded there – and you could not understand this. This is not for women. Women cannot understand this."

Despite that, we kept on following them because they have a monthly meeting. The information we get there is very essential to the security of the people in the communities. And so we kept on following and they still closed the door on us. We literally stood in the lobby for our lobby work. We finished drinking a lot of coffee while they were holding their meeting, but still they would not al-

low us. When we asked the government again if we could participate in the peace talks, because again, that was part of the 1325 resolution, the reaction was, "Why would you participate? We are not at war with you. Do you have an army or a revolutionary front? Why do you want to join the peace talks?"

"We are not at war with you." Are these people not indeed at war with the women? Why is it that in the long years of armed conflict in Mindanao it is the women who are losing the battle? It is we women

'We are not at war with you.' Are these people not indeed at war with the women? Why is it that in the long years of armed conflict in Mindanao it is the women who are losing the battle? It is we women who are losing our minds. It is we who are watching our children die one by one in the evacuation centers. It is we who are losing our homes And they tell us we have nothing to do with it.

who are losing our minds. It is we who are watching our children die one by one in the evacuation centers. It is we who are losing our homes, our utensils in the kitchens, our ladles, our *malongs* and our clothing. And they tell us we have nothing to do with it. Again, the reason is because of this invisibility: voiceless, nameless and faceless victims of war.

I remember a meeting with the division commander of the military and I raised the issue of the missing ladles of the women. In one of our meetings in the community, the women were complaining because when they return home after the military operations, everything is taken away from them: from the ladles to the utensils, to the equipment in the houses, to the goats, to the chickens and all the livestock. So we went to report this to the military camp and we were there to report the missing ladles.

When we went inside and informed the military

about this, all the soldiers could not control their amusement. They were laughing like we just told them the funniest joke of their lives. What's the big deal about the ladle? But the ladle is not just the issue here. It is the whole madness of war which lashes the biggest blow on the women. The ladle is a symbol of a woman. It represents us as the giver of life, the nurturer, the hand that feeds everybody. Men have defined what is important or not. The issues of women are small things, soft issues, crying sessions that do not deserve any place in the negotiating table.

Resolution 1325 turned five years old last October 31. Five years after, the Security Council has not done anything to enforce and implement it in the conflict areas. Even the U.N. agencies in Mindanao are not promoting it with the same vigor as the Millennium Development Goals (MDG), for instance. I have nothing against the MDG, but in the armed context which we are facing, I think U.N. Security Council Resolution 1325 is more relevant in our work.

We have a woman president in the Philippines. In fact, she was here in the U.S. two months ago to preside over a meeting of the U.N. Security Council. Gloria Macapagal Arroyo was the first woman to have presided over the most powerful body of the United Nations. But the shame of all shames is that she has not done anything to comply with resolution 1325.

The big question that comes to mind is this, and this is all our problem now: Where is the accountability? Where do you start finding justice in a war that simply divests us of our humanity? How do we bring the perpetrators to justice? And again, like many of the women here, I am facing a blank wall. How can you talk of accountability when the soldiers who massacred a family in Sulu, when the soldiers who rape the women, instead of being punished are promoted as good officers in the military? They are promoted and given medals instead of an investigation.

Last November 1, there were six U.S. soldiers who raped a 22-year-old woman in the Philippines. Instead of bringing the soldiers to court to face a trial and give justice to the victim, they are simply being processed to return back to the U.S. or to the Okinawa naval base. And the U.S. is saying that under the Visiting Forces Agreement between the U.S. and the Philippines, all the soldiers that

come to our country are on an official mission. So, whatever they do, even if they rape 22-year-old girls, that is part of their official mission because they are in a foreign country. That is a very big problem now and it happened even before when we were still hosting the military bases (until they were closed in 1991); there were several women who were raped. Some of them, in fact, were even mistaken for wild boars and were shot by U.S. soldiers.

Let me tell this honorable court that in the Autonomous Region of Muslim Mindanao, where the most barbaric forms of human rights violations are committed by the men in uniform, there is no human rights commission. We have human rights offices in Manila, in the other urban centers in Mindanao, but in the area itself where the highest number of violations are being committed, there is no human rights commission there. The human rights people are located in Manila, in comfortable offices where they can recite the Universal Declaration of Human Rights peacefully there. But they are not doing anything where the actual violations are happening.

By way of recommendation, I am appealing to this honorable court to urge the United Nations Security Council to direct all the U.N. agencies and machineries operating in Mindanao and the other conflict areas of the world to vigorously work toward the full implementation of resolution 1325, to its letter and spirit. This is a very important instrument which we can all carry with us, with which we can show our visibility as members of this community, as members of this society.

The only way to break our invisibility is to give a resounding statement that we do exist and we want our space at the negotiating table. Let our voices be heard. Let our presence be felt not only in this room, but in the halls of the United Nations and to all its member countries. Thank you very much.

Ezeilo: Thank you very much, Mary Ann, for that very fascinating presentation, and at the same time sad presentation, that laws and resolutions are not being followed. From your experience as an activist, what do you think would be the best way to ensure implementation domestically of U.N. Resolution 1325? Have you and other women's groups considered making communication to CEDAW committees or the Commission on the

Status of Women, and not only just writing, but also organizing and coming to New York for their February/March session? This will shame the government and then they will put that in their recommendation to the General Assembly and probably force them.

But again, I am looking at other situations where women have forced themselves to the negotiating table, because if we continue to beg for some of these things, they may never come our way. I remember, for example, in the Niger Delta of Nigeria, where women have been excluded on all the memoranda of understanding and peace negotiations, they just organized and planned across communities and took over oil wells. For 11 days they were there sitting, cooking, not moving – the men never believed women could plan that. And they planned without any leak in the information. So it took the transnational corporations by surprise and they forced them to negotiate with them and sign an agreement with them.

So we also have to think of alternatives to this resistance, because we continue to beg without agitation – serious agitation – and embarrassment of government. Having a woman president doesn't necessarily translate to having a gender-sensitive president. We have people recommending that we have a tribunal that is as gender-sensitive as this one, or like the ICC, but at the same time, that is not a guarantee that women will actually get justice or be treated better than even having a gender-sensitive male president. So I want to know if you have explored other opportunities to really get yourself at the table using resolution 1325 as your advocacy.

Arnado: In addition to my first recommendation earlier, I would like to recommend that we confer on Justice Richard Goldstone the title of honorary woman for the Global Women's Court of Accountability. But with regards to Resolution 1325, I think the accountability there is to the Security Council itself and to the United Nations. You cannot expect women in the conflict areas who are running for our lives, who are escaping the bombs that are dropped in our communities, to say, "Oh, hello, there is 1325 here. Can we participate?" I think it is the Security Council who should do that and it should enforce this resolution through the resources of the United Nations agencies. We have all the United Nations agencies operating in Mindanao, but they are not so active in promoting this or even

telling people that there is this resolution which we can use. All the U.N. agencies should work together, cooperate and ensure that the women will be able to use this resolution.

Bensouda: Mary Ann, I just wanted to know for my education, how active and coordinated are the human rights groups in your country? I think this is a very important aspect of the fight. Is it a coordinated effort or are you all on your own?

Arnado: Well, I should say that we have very vibrant human rights organizations in the Philippines. These were developed during the Marcos dictatorship, and we have these groups. But it seems to me that they are also contaminated with invisibility. They do not see the situation of the women in the conflict areas. We have all the advocacies for domestic violence, battery, women's issues, feminist issues of equality and participation in the whole country in general. But in terms of looking into the situation of women in conflict areas and attending to the special needs that are required there, that is something we still need to improve and work on as a civil society.

Judges: Thank you very much.

Demands for Accountability

- Urging of the U.N. Security Council to direct all the U.N. agencies and machineries operating in Mindanao and other conflict areas of the world to work vigorously toward the full implementation of resolution 1325.

CHAPTER III – DEFENDING RIGHTS: Legal Specialists on Progress in Accountability

COMBATING IMPUNITY: RESPONDING TO HUMAN RIGHTS ABUSES

William Aceves –
California Western School of Law



William Aceves is professor of Law and associate dean for Academic Affairs at California Western School of Law. He frequently works with Amnesty International, the Center for Justice & Accountability, the Center for Constitutional Rights and the American Civil Liberties Union on projects involving the domestic application of international law. Aceves has appeared before the Inter-American Commission on Human Rights, the U.N. Special Rapporteur on Migrants and the U.S. Commission on Civil Rights.

Good morning and may it please the court. I cannot match the eloquence or the experiences of those speakers that have gone before me. I can only rely on the law.

This court has heard detailed testimony from survivors, from defenders, from witnesses about the

abuse suffered by women throughout the world. It has heard testimony about women who were traumatized by war and other forms of violent conflict. It has heard testimony about women who were victims of sexual violence. It has heard testimony about women, mothers, daughters, sisters and wives whose family members have disappeared. This court has heard testimony about the perpetrators of these acts, about the role of state actors, about the role of public officials and government and military personnel.

This court has heard testimony about how the suffering of women has extended throughout history and throughout this earth in times of peace and in times of war, in modern states and in those countries that are still pursuing democracy and modernity in Europe, the Americas, Africa and Asia. This Global Court of Accountability has been asked to listen to the voices of women who have suffered in conflict and post-conflict situations and to speak on their behalf.

Today, a group of legal specialists has been asked to discuss the role of law in the struggle to promote the rights of women. In my opening statement I'll discuss impunity and the need to promote accountability. But, I'm also here to talk about human dignity and justice.

When someone suffers abuse, it is an affront to human dignity. When perpetrators of such abuse are not held accountable for their actions, it is an affront to justice. I'll first describe the concept of impunity, and then I'll talk about accountability, and finally I'll identify several methods for promoting accountability through the rule of law.

Impunity

What is impunity? It means a lack of accountability. It occurs when individuals who have committed serious abuses of international human rights norms are not held responsible for their actions. And impunity exists on three levels. It exists on the level of the individual: when an individual or person refuses to acknowledge the wrongfulness of their conduct. And there are many reasons for why individuals commit serious abuses of interna-

tional human rights norms: fear, ignorance, hatred, greed. But certainly one factor is the belief that they can get away with what they've done.

Second, impunity exists at the state level: when governments refuse to take responsibility for their own actions. The third level of impunity exists at the international level: when the international community does not respond to human rights abuses. On some occasions, the international community does not care or does not care enough about the

On some occasions, the international community does not care or does not care enough about the abuses taking place. It simply does not have the political will to respond.

abuses taking place. It simply does not have the political will to respond. On other occasions, the international community believes it would be counterproductive to pursue these individuals.

Why combat impunity? Why should this Global Women's Court of Accountability heed the call to take action against individuals who have committed serious abuses of international law against women? It is certainly much easier to remain silent. There are several reasons to combat impunity. First, it affirms the normative value of life and upholds respect for human dignity. Torture, sexual violence and other forms of persecution are antithetical to these values, and impunity further undermines them. By punishing perpetrators of abuse, we condemn these acts and confirm and affirm respect for life and human dignity.

Second, promoting accountability acts as a deterrent against future atrocities. A lack of individual accountability encourages human rights violations. Impunity sends the message to these perpetrators that they can get away with their actions. By pursuing accountability, by combating impunity, the international community places perpetrators on notice that they will be punished.

Third, promoting accountability affirms the rule of law. Torture, murder, rape and all forms of sexual violence are violations of national and international law. If states do not prosecute violations of the law,

If states do not prosecute violations of the law, it suggests that the law is irrelevant.

it suggests that the law is irrelevant. The International Military Tribunal at Nuremberg in 1946 acknowledged this important role. Crimes against international law, according to the military tribunal, are committed by men and not by abstract entities, and only by punishing individuals who commit such abuses are the provisions of international law enforced.

Fourth, promoting accountability performs the crucial function of distinguishing individual accountability from group accountability. Groups identified by certain shared characteristics often receive public blame, both at home and abroad, for the crimes of relatively few offenders. Not all Germans participated in the Holocaust; not all Hutus participated in the Rwanda genocide. Legal proceedings focus blame where it belongs, calling individuals to task and to account for their crimes and absolving communal responsibility. A member of this global court has recognized this phenomenon when describing the importance of the International Criminal Tribunal for the former Yugoslavia. Too many people in the former Yugoslavia still blame Serbs, Croats or Muslims for their suffering. That tribunal's mandate is to help fight this destructive legacy.

Fifth, promoting accountability reinforces human rights values everywhere. Publicity generated by these cases helps to educate the general public about the importance of human rights. Publicity can also provide support for human rights activists around the world. Efforts to hold perpetrators accountable in one country or in one tribunal demonstrate to the international community that there are judicial systems that are willing and capable of combating human rights abuses.

Sixth, promoting accountability encourages the search for truth. Human rights violations often take place in the dark, in the dark of night, in hidden cells, in faraway lands, far from public eyes. Accountability sheds a light into the darkness. By pursuing public cases, a permanent record is created that identifies the perpetrator, the victim and the atrocities committed. These developments can promote further social and political reconciliation in

Human rights violations often take place in the dark, in the dark of night, in hidden cells, in faraway lands, far from public eyes. Accountability sheds a light into the darkness.

countries traumatized by periods of repression and persecution.

Finally, the struggle against impunity benefits victims. It can assuage feelings of helplessness and defeat emotions that often permeate victims of abuse. Accountability efforts can also promote reparations for victims, which is an important component of the search for accountability including rehabilitation, restitution and compensation. In sum, the fight against impunity serves many purposes and we must recognize the struggle to promote accountability is a fight worth fighting.

International Norms

This Global Women's Court of Accountability has heard detailed testimony from survivors, witnesses and human rights defenders about the abuses suffered by women throughout the world in conflict and post-conflict situations. And it was provided an indictment that identified numerous examples of the abuse suffered by women.

We've heard some of that: murder; extermination; enslavement; deportation or forcible transfer of populations; imprisonment and other severe deprivations of physical liberty in violation of international norms; torture and other cruel, inhuman or degrading treatment; sexual violence that includes but is not limited to rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence; enforced disappearances including but not limited to arrest, detention and abduction of persons; discrimination of women in all situations; situations which have the effect or purpose of impairing or nullifying the rights that women have – the right to enjoy fundamental freedoms in the political, economic, social, cultural or civil fields. Other forms of discrimination or persecution have been identified over these past two days, and all other inhumane acts of a similar character that intentionally cause great suffering or serious injury to body or to mental or physical health.



Bensouda listens to the statement from William Aceves

As it considers an appropriate response, this court should recognize the international norms that apply. And once again the indictment sets forth a number of international instruments that prohibit the abuse that we heard today and yesterday. These include: the Convention against Genocide; the Convention on the Elimination of All Forms of Racial Discrimination; the Covenant on Civil and Political Rights; the Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention against Torture; the Convention on the Rights of the Child; the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the Rome Statute of the International Criminal Court, which codifies the prohibitions against genocide, war crimes and crimes against humanity; the Geneva Conventions, including the Geneva Convention relative to the Protection of Civilian Persons in Time of War.

This court should take judicial notice of these treaties and all other applicable international agreements as well as the broader norms of customary international law that prohibit sexual violence and all other forms of abuse. There are also regional agreements that provide protections with respect to international human rights norms: the American Convention on Human Rights; the European Convention for the Protection of Human Rights and Fundamental Freedoms; the African Charter on Human and Peoples' Rights.

Limitations of International Agreements

But, as this global court considers these agreements and the broader norms they espouse, it must recognize that these agreements suffer from their own limitations. These agreements typically require some form of state action before a violation of international law can be established.

For example, the definition of torture under international law requires a public actor, requires some type of public action. It does not extend to private acts of abuse in the Convention against Torture. Thus, victims of domestic violence cannot claim that their rights were violated under the international definition of torture as set forth in the Convention against Torture, even though their suffering is as pronounced as a victim of political repression. The requirement of state action extends to a number of other violations of international law.

Another problem with these agreements is that most of them are more concerned, it seems, with state rights than human rights, even though they are set forth as human rights instruments. States are only bound by those treaties that they have signed and ratified, and those agreements seldom provide an enforcement mechanism.

Finally, most of these agreements provide no right of action to private individuals. In other words, individuals are seldom given the right to raise their own claims before an individual tribunal. Victims of abuse must ironically rely on state actors to defend their rights.

Recommendations

These limitations are perhaps symptomatic of some of the broader limits of international law. And

... this court should, first, interpret the language of international agreements in the broadest possible sense so as to provide the maximum level of protection to victims of human rights abuses.

so, accordingly, this court should, first, interpret the language of international agreements in the broadest possible sense so as to provide the maximum level of protection to victims of human rights

abuses. The spirit of these agreements, if not the letter, should guide this court.

Second, this court should refuse to recognize or accept any assertion of immunity or amnesty that could be argued by a government actor. International law firmly prohibits any efforts to use grants of immunity or amnesty to bypass accountability for human rights abuses.

Third, this court should not limit its analysis to perpetrators. It should recognize the importance of addressing remedies for victims themselves.

Finally, this court should consider all mechanisms for promoting accountability including national tribunals, regional courts and international tribunals and institutions.

Let me take a brief moment to conclude. For too many years, victims of human rights abuses have suffered in silence and their calls for justice have gone unheeded. Despite the international consensus against sexual violence and discrimination against women, the tragic reality is that human rights violations continue to plague us throughout the world and women continue to suffer disproportionate injury.

Efforts to promote accountability as have been set forth serve many functions. Human dignity suffers

Human dignity suffers at the hands of the abuser, at the hands of the perpetrator, but it also suffers in the face of impunity.

at the hands of the abuser, at the hands of the perpetrator, but it also suffers in the face of impunity. In the absence of a firm and forceful response to abuses of international law, women will continue to suffer long after their physical and emotional scars fade from the public conscience.

This Global Women's Court of Accountability can thus serve the noble goals of law by providing a voice for victims and a forum to hear their cries. This court can play an important role in the struggle to combat impunity and to promote accountability. It can affirm the rule of law and the role of law in the effort to respond to human rights

This Global Women's Court of Accountability ... can ensure that we do not become indifferent to suffering.

abuses as a mechanism for providing an effective response to violence. And it can ensure that we do not become indifferent to suffering. It is, in fact, our ability to feel the pain of others that makes us human.

For the foregoing reasons, this global court must stand ready to adapt as appropriate, to shape redress as necessary and to answer measure for measure the evil that it confronts.

Thank you.

Bensouda: Thank you for your very brilliant presentation. It is highly informative for this court because as an expert you have also provided us with some expert information. But, I still have some problems. I want you to really tell me how I deal with situations where states have not ratified any of these important treaties we are talking about within the realm of humanitarian law or human rights. We have identified some Arab countries that have not even ratified the four Geneva Conventions. How can we hold them to account at the international level?

And even within that, the rule of law is not sort of an abstract – it's within the national constitutions that also have different systems for the transformation of international law. And then if you are looking at some who have a commonwealth or a dual system where international law doesn't apply automatically in the country, how can the victim be able to get effective remedies? It appears here that international law at times doesn't help because it came too late, it's not very effective, it's not timely, it's not adequately accessible even to get redress – you know that takes a long time.

So, how do we help victims currently persecuted, victims who are suffering all forms of violations of their human rights, who are threatened with extrajudicial killings, disappearances? How will this court and even the international community be of help?

Finally, what about the non-state actors? You know, how do we get them? Those who are reb-



els, not really under the control of states, private citizens who perpetuate the harmful traditional practices as female genital mutilation – how do we bring them within the realm of international law? Thank you.

Aceves: At the first level, this court – by its mere existence, by giving victims and defenders and witnesses an opportunity to present the facts – provides one mechanism for promoting accountability because many of these individuals have never had the opportunity to present their evidence, to present what abuses have taken place – because of the limits of international law, because of the limits of their own national governments. And so, simply creating a public transcript, I think, plays a prominent role in promoting accountability. By the simple fact of its existence, this court itself has already given an opportunity for accountability to develop.

In many respects it's not even those countries that have not ratified international agreements that pose a concern. There are many countries that have ratified some of these agreements that continue to violate them. Whether they are the Geneva Conventions, whether perhaps the Rome Statute, whether it is the Convention against Torture, we don't have to look very far to see situations where some of those treaties have not been complied with even by ratifying states.

I think one of the prior speakers noted the importance of nongovernmental actors. Certainly, pressure must be placed at the international level within international institutions. Certainly, efforts must be placed by states encouraging, forcing, compelling, coercing other state actors to abide by international norms. So, international condemnation plays a role. Institutional condemnation by the

United Nations, by the European Union, by the Organization of American States plays a role.

But also nongovernmental actors and private citizens, grassroots efforts, play a critical role in promoting accountability because it is, in fact, the people, humanity itself that can serve as the last arbiter of accountability if the international community refuses to act and states refuse to act as well. Encouraging local action at the regional level, at the local level, also promotes accountability. In situations where countries have not ratified prominent international agreements, it is that public pressure that plays a role. The development of the International Criminal Court saw the influence that nongovernmental actors could play, and nongovernmental actors have played a prominent role in getting countries to sign on to the Rome Statute. Many of the more recent efforts of getting states to sign on have been the result of nongovernmental actors, grassroots activists, to promote accountability.

In terms of non-state actors, I think part of the goal would be to interpret the treaties in the broadest possible sense to acknowledge the responsibility of even private actors for their complicity in human rights violations. Not just terrorist organizations, corporations should also be held accountable for the actions that they take abroad. And there has to be a movement, perhaps at the state level or within international institutions, to recognize that non-state actors today play as critical a role in promoting or violating human rights as the state does. And in some instances, nongovernmental actors, whether they are individual groups or whether they are corporations, have played a profound role in abusing human rights, and greater accountability must take place at that level within the international community.

Bensouda: Do you have any precedents to give this court on holding corporations accountable that will help us to reach our decisions?

Aceves: Following the Second World War, there were a series of international tribunals established by the Allied powers. There were Control Council Law No. 10 Tribunals that were established to prosecute not only military and political leaders of Nazi Germany, but also, in fact, private individuals including corporations and corporate officials. And so, several individuals from corporations were, in fact, held accountable by these tribunals after the

Second World War.

Recently in the United States there have been efforts to hold corporations accountable for violations of international law, and some U.S. courts have allowed victims of abuses to target the corporations as being complicit in those abuses. In fact, earlier this year, Unocal corporation settled a significant human rights lawsuit by victims of abuses from Burma, or Myanmar, in federal district court, and they agreed to provide compensation to the victims in that case.

The United Nations has also undertaken several efforts to establish and draft transnational codes of responsibility with respect to corporate actors. So, there are mechanisms available both internationally and nationally where corporations can be held accountable, and arguably those procedures could be applied to private groups as well.

Bensouda: Thank you very much.

Ezeilo: Perhaps you have answered this question in your previous response to the question posed by my fellow judge, but this is more specific. I just wanted to know if you have any recommendations for domestic violence victims, given the limitations of the Convention on Torture?

Aceves: It is difficult without making an actual amendment to the Convention against Torture. It would be difficult to extend acts of domestic violence – with one possibility. If government actors know that abuses are taking place at the individual level and those government actors refuse to participate in suppressing those abuses, I think an argument could be made interpreting the nature and scope of the Convention against Torture that the government actors are complicit in those abuses. And, if they are, in fact, complicit by failing to properly respond and hold perpetrators of that abuse accountable, then perhaps even within the construct of the Convention against Torture, individual perpetrators of domestic violence could be held accountable, and if not, the national governments could be held accountable for failing to take proper actions.

Similarly, efforts could be made to provide a broader interpretation of the definition of refugee under international law. And, in fact, there have been some instances – limited, but developing – where governments have recognized that victims of do-

mestic violence may seek refuge in other countries in light of the failure of the home country to provide redress to those victims, to protect those victims of abuse. So there are, perhaps, mechanisms available. There are ways of interpreting the law as it's currently drafted to give a greater level of protection for victims of private acts of abuse. But it would take political will; it would take courage on the part of prosecutors and judges to extend those norms to that level.

Ezeilo: Thank you.

Kcomt: Professor, in your presentation you talked about impunity in three levels. I want to ask you which one you think is the consequence of the impunity.

Aceves: I noted that impunity occurs at three levels and I think all are to a great extent equally responsible for the abuses that take place. Ultimately, abuses are committed by individuals and so the individual must take responsibility. We must recognize the various reasons for why an individual commits those acts of violence. We must recognize greed, fear, ignorance, prejudice. But, also recognizing that if they believe they cannot be held accountable, if they believe they can walk away from their abuse, they are more likely to commit those abuses.

Similarly, if governments fail to take account, fail to respond to the actions of individuals living in their countries or individuals who have entered their countries that have committed abuses, it continues the perpetuation, it continues the cycle of violence.

Third, the international level: The international community has constantly failed to take enough action at situations of abuse. It took too long for the international community to respond to what was taking place in the Sudan, in the Darfur region. It took too long for the international community to respond to the abuses in Rwanda, to the abuses in Bosnia.

And so, I would be hesitant to identify one level as solely responsible because I think it makes it easier for that particular level – a state, the international community or the individual – to absolve itself of responsibility. I think we need to focus on each level equally and recognize that every actor – the individual, the state or the international community – must equally respond and respond

forcefully to acts of violence.

Waller: Could I ask for a little clarification about what you mean by the individual? I very much appreciated your response about corporations because that was going to be one of my questions too. But just as you were speaking now about individuals committing these acts, I am reminded of cases where soldiers have been participating in very tortuous interrogation techniques in Abu Ghraib and other prisons, and who regret that they've done that and can't even figure out why they did that. Obviously they were given orders to do that and there was the problem of whether you follow the order or not, but they really can't figure out what happened. So, what happens to the notion of the individual under circumstances like that?

Aceves: Under international law, individuals, military personnel, do have the opportunity to rely on a superior orders defense, but that's subject to significant limitations. If they knew that the order was a violation of international law, for example, they could not rely on a superior orders defense. So, there are mechanisms available in international law that do acknowledge the unique circumstances that may exist with respect to particular individuals. But I think it's important to recognize that no superior order authorizing acts of sexual violence or other violations of international law would ever be recognized by a tribunal or should ever be recognized by a tribunal.

And that also goes with respect to amnesties or purported immunities of heads of state, for example. International law has, in some instances, recognized the individual has to be held accountable and has thought to move aside those mechanisms that previously have allowed the individual to escape accountability. So, no defense of superior orders if the individual knows that the abuse is, in fact, a violation of international law. No claim of immunity for heads of state. No amnesty decrees can set aside war crime abuse or crimes against humanity, for example.

Waller: But, what about the opposite circumstances where these individuals can't even get any state entity to listen to them to admit that they did commit a crime? In fact, they live in fear that somebody is going to have them done away with simply because they have tried to say, "Look, I've committed a crime and I can't get anybody to rec-

ognize it in this state.”

Aceves: That’s a difficult question to answer. I think that promoting a constant openness of the abuses that have taken place is the first step. If their government is unwilling or unable to act, then it is the responsibility of other governments to do so. There have been some efforts in recent years where if one government, one country, is unwilling to respond, other countries are willing and have taken the first step in promoting accountability extraterritorially. We have seen that with respect to abuses that have been committed in Rwanda, in Liberia, in Sierra Leone, in Bosnia and a number of other countries. So there are these efforts to promote universal accountability, so that even if the perpetrator’s country, own country, refuses to act then there are mechanisms available for other countries to step into the breach and take account and hold the perpetrators responsible.

Judges: Thank you.

GENDER-SPECIFIC INTERNATIONAL CRIMINAL LAWS EMERGING FROM TRIBUNALS

Estelle Dehon –
(formerly) South African Constitutional Court



Estelle Dehon is a lawyer from South Africa and has worked in Justice Richard Goldstone's chambers of the South African Constitutional Court. She was a researcher for the Independent International Commission on Kosovo and helped draft and edit the commission's report, presented to the United Nations in October 2000. Dehon is a member of the Inner Temple and president of the Inner Temple Mooting Society.

Judges of the Global Women's Court of Accountability: Over the past day and a half, you have heard the testimony of incredibly brave women – women survivors of gender crimes, women who have been witness to such crimes and women who dedicate themselves to defending the rights of others to be free from such crimes. And now it falls to me and my fellow presenters on legal accountability to outline the measures that are available, legal measures available, to provide redress for these women. In the face of the raw and powerful testimony we have heard, this is a daunting task, and it is one that I am deeply honored to have been chosen to undertake.

I will be addressing you on humanitarian law and the laws of war. I will submit that there is an emerging body of international law that presents a real possibility of bringing some of the perpetrators of gender crimes to justice. I will outline as briefly

and as accessibly as possible the huge advances that have been made by the International Criminal Tribunals for the former Yugoslavia and for Rwanda. I will then focus on how these advances have been taken up by the statute of the International Criminal Court.

I will also discuss the innovations that have been made by the statute of the International Criminal Court which gives us hope that the court may provide an even greater measure of accountability for crimes against women. The International Criminal Court, or ICC, is set to become the foremost legal site of accountability for gender crimes and that works alongside and complements other forms of accountability. I will ask this court to include in its findings certain recommendations about how different parts of that court can ensure that gender crimes are properly dealt with.

Let me begin by outlining what gender crimes are. These are crimes committed disproportionately against women and girls and they include: persecution on the basis of gender, rape, sexual assault, sexual slavery, forced impregnation, forced maternity, forced abortion, forced sterilization, forced marriage, forced nudity, sexual mutilation, sexual humiliation and sex trafficking. For many hundreds of years, these gender crimes were committed against women during conflict but were largely ignored by the international laws designed to regulate war. Even where prohibitions occurred on crimes like rape, they were at best ignored, or at worst slaughtered.

The establishment of the International Criminal Tribunals for the former Yugoslavia and Rwanda marked a sea change in this shameful history. They really were unique in showing, right from their inception, a concern to ensure that prosecu-

The establishment of the International Criminal Tribunals for the former Yugoslavia and Rwanda marked a sea change in this shameful history. They really were unique in showing, right from their inception, a concern to ensure that prosecutions for gender crimes would occur.

tions for gender crimes would occur. From the Security Council resolution that gave rights to the tribunals, to the commissions of investigation that set out to find facts about the conflicts they dealt with, to the way the statutes were drafted, to the policy of the prosecutors and the judges, gender crimes were at the forefront of the tribunals' drive for accountability.

And in the cases where gender crimes were ignored, the small number of cases, the concerted efforts of women, NGOs and rights organizations ensured that they were taken into account. As a result, several landmark judgments have been handed down by these tribunals in which justice has been achieved for gender crimes, and my first task before you today is to give a brief description of four of these cases.

Prosecutor v. Jean-Paul Akayesu

The first is the Prosecutor v. Jean-Paul Akayesu, which concerned the mayor of a commune in which displaced women who had sought refuge were gang raped and subjected to sexual humiliation. When women witnesses called before the Rwanda tribunal spontaneously testified of the

When women witnesses called before the Rwanda tribunal spontaneously testified of the gender crimes, the judges recognized this and postponed the trial in order to allow the prosecutor to indict these crimes.

gender crimes, the judges recognized this and postponed the trial in order to allow the prosecutor to indict these crimes.

In the judgment, Akayesu was found guilty of rape as a crime against humanity and also rape as a constituent part of genocide, both revolutionary findings in international law. The court also held that forced nudity amounted to sexual violence and could be a crime against humanity.

The court in Akayesu became the first international judicial body to define the crimes of rape and sexual violence. The chamber adopted a progressive definition, stating that the central elements of rape cannot be captured by a mechanical description of



Skulls from the genocide in Rwanda
(photograph provided courtesy of IRIN)

In the judgment, Akayesu was found guilty of rape as a crime against humanity and also rape as a constituent part of genocide, both revolutionary findings in international law.

body part and object. Instead, rape is defined as a physical invasion of a sexual nature, committed on a person, and in circumstances which are coercive. The chamber stressed that coercion may be inherent in international armed conflict situations where military personnel or militia are present.

elebi i Case

This finding was echoed by one of the important judgments by the Yugoslav tribunal in the elebi i case, in which the judges emphasized that punishment, coercion, discrimination or intimidation are inherently part of the reason for rape committed in armed conflict. That case concerned four who controlled a ward in elebi prison camp, where the women detainees had been repeatedly raped and sexually assaulted, either as a means of torture or as a prelude to being killed.

These gender crimes were charged not as crimes themselves, but as a constituent part of the crime of torture, which was a very successful tactic taken by the prosecutor's office in order to ensure gender crimes were prosecuted. This also brought a gender crimes aspect to crimes that previously had not dealt with the gender aspect at all.

These gender crimes were charged not as crimes themselves, but as a constituent part of the crime of torture, which was a very successful tactic taken by the prosecutor's office in order to ensure gender crimes were prosecuted.

The trial chamber found that rape can fulfill the elements of torture, stating that the trial chamber considers the rape of any person to be a despicable act which strikes at the very core of human dignity and physical integrity. For torture to be proved, the prosecution must also show that the acts were committed for a prohibited purpose.

Significantly, the judges in the Čelebići case found that discrimination on the basis of sex can be one of those prohibited purposes. So the fact that these women were raped because they were women elevated those crimes to the statutes of torture. This also recognized that women can be tortured in a different way from men and that they can be singled out on the basis of sex or gender.

Prosecutor v. Dragoljub Kunarac

Another historic judgment handed down by the Yugoslav tribunal was that in the case of Kunarac, which gave the first conviction ruling for enslavement in conjunction with rape, as this enslavement was held to be a crime against humanity. The accused were leaders and members of a military unit who had gathered the men and women of a town together, separated the women and taken the women to schools or gymnasiums to be raped. Some women were also permanently removed to private houses or other facilities where they were held for access by their sexual captors whenever

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they demanded it.

Although the term “sexual slavery” was never used in the judgment, the tribunal has given extensive analysis of what it means for someone to be enslaved for sexual purposes. The tribunal found that the definition of enslavement means exercising of power detaching to the right of ownership over a person, and that it can be indicated by taking away someone's control over their autonomy, over their freedom of choice or their freedom of movement. Importantly, the judgment forcefully concluded that the women did not need to be physically restrained in order to be enslaved, so even if they stayed in the facilities because they feared being recaptured and the retribution that would happen should they escape, that was sufficient in order for them to be in enslavement.

In discussing the definitions of rape and enslavement, the tribunal in Kunarac continually emphasized that gender crimes involved the negation of sexual autonomy. This was the first time that international law recognized the concept of sexual autonomy and it is important to women. It is hoped that this will be taken forward in the way gender crimes are prosecuted in the future. Finally, the court should know that in Kunarac and in some of the other cases before the tribunals, gender crimes were the sole concern of the indictment. And this shows that gender crimes really were serious crimes that were taken seriously by prosecutors.

Prosecutor v. Anto Furundzija

Finally, I will briefly examine a case in which the tribunal showed that the rape and sexual abuse of a single woman can constitute a serious violation of international law deserving prosecution. The case of Furundzija concerned the rape and torture of one woman who was taken to and held at the headquarters of a military police unit. Two sub-commanders interrogated her. One questioned her about the whereabouts of her husband. The other threatened to mutilate her sexual organs and then raped her.

The tribunal found that Furundzija, who had been the questioner but had not committed the rape, was nonetheless guilty of her rape and torture. It also held that when the interrogator, the other interrogator, had forcibly penetrated her mouth, this was sufficient to constitute rape. Finally, the tribunal held that one of the purposes of forcing

that woman to appear naked before soldiers and raping her was to humiliate her, and the purpose of humiliation was sufficient again to elevate the crime to torture.

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that they dealt with. So they prosecuted together commanders, guards, workers, so the full story of what happened in that camp could be told by the women and by the court. Similarly, they prosecuted together politicians and military leaders so that the full story of planning an execution of conflict could be told, and indeed, this is a prosecutorial strategy that we hope will be taken forward by the International Criminal Court.

Development of Procedural Laws

Let me move on to the procedural laws that were developed by the tribunal. They were also very revolutionary and are necessary in order to provide accountability for gender crimes. Firstly, no corroboration is needed for victims of gender crimes in order to prosecute based on the testimony of that victim. Secondly, the consent defense was very severely limited in the way that it could be raised. Although this has been slightly diluted by the fact that consent is an element of rape, it is hoped that where consent is raised as a defense, very specific actions on the part of the woman will be required in order for it to fly as a defense.

And this court should also note that in Kunarac, one of the women had approached Kunarac and initiated sexual relations because she had been told that she would be killed if she didn't do so. Kunarac's claim that he thought that she was consenting was rejected by the court who said that it is wholly unrealistic in the light of the situation that

she could have been held to consent.

The rules also specifically exclude a particularly insidious practice: the admissibility of prior sexual conduct of the victim. The courts have distanced themselves from the implication that a woman with a sexual history is an unreliable witness, and have also spared women who may have known their perpetrators before the conflict or that pre-conflict relationship being brought up as a possible bar to prosecution.

Finally, the rules of the tribunals allow protective measures to be taken to protect witnesses, including in exceptional circumstances not disclosing the identity of those witnesses even to the defendant. Other measures are available, such as reduction of the record, suppression of witness identity and holding closed sessions.

Rome Statute

All these advances have been presented in the statute of the International Criminal Court and it is to the statute that I now turn. The statute provides

The statute provides a firm basis on which gender crimes can overtly be addressed.

a firm basis on which gender crimes can overtly be addressed. The definitions of the crimes that fall under the jurisdiction of the court all include a proper account of gender crimes. They are included under crimes against humanity, war crimes in both international and internal conflict, and under basis for genocide. In the echo of the Čelebići judgment, even persecution on the basis of gender is enumerated as a separate crime against humanity.

On the procedural side, the statute requires that a fair representation of female and male judges be taken into account in the selection process. This provision formed a backdrop to one of the most astounding events in the history of international law. The first round of voting to elect ICC judges resulted in the appointment of six women and one man, causing the minimum voting requirement in the second and third round to ensure that some male candidates had to be elected. An additional woman judge was elected in the ninth ballot,

... the statute requires that a fair representation of female and male judges be taken into account in the selection process. This provision formed a backdrop to one of the most astounding events in the history of international law ... : the most gender-diverse court in international history.

resulting in a bench of seven women and 11 men, the most gender-diverse court in international history.

The rules and procedures of evidence of the International Criminal Court also codify the advances made by the tribunals. They dispense with the corroboration requirement, they have an even more severe discussion of consent and they consent with victim's prior sexual history being inadmissible. Finally, the definition of rape in the court's element of crime is an amalgamation of the tribunals' definition, which includes the notion of a physical invasion as a key finding to rape. It is submitted that – and this is interpreted in the light of Kunarac's discussion of sexual autonomy – this will allow for the international law to have a progressive and incredibly useful definition of rape.

Another important duty is also to impose on the prosecutor, the registrar and the Victims and Witnesses Unit, in order to ensure that gender crimes are prosecuted, that victims and witnesses of gender crimes are very sensitively dealt with. But the court's statute contains two further innovations and these are innovations I would like to highlight to the court today.

The first one deals with one of the limitations that was raised by a previous speaker, Dr. Aceves, because for the first time in the history of international justice, victims now have the possibility of presenting their views and observations directly to the court. There is a Victims' Participation and Reparation Unit that has been set up, and it has the duty to help victims in proceeding before the court. Victims may file submissions at any stage of the case, and they have their own defenders and representatives who will be able to argue before

the court and may even be able to put questions to witnesses.

The Registry and the Victims' Participation and Reparations Unit also has an obligation to notify victims of the proceedings. They have to be notified of when the Office of the Prosecutor makes a decision about taking the case forward, they have to know about every single stage that the court makes a decision, and they obviously have to be notified of the main proceedings and of the result of the proceedings. It was still one of the great difficulties the Rwanda and Yugoslav tribunals faced, that women came to the court, gave evidence, went back to their homes and never heard of what happened. And the International Criminal Court, ensuring that the victims feel that there has been accountability, has included this duty of notification in its statute.

Also for the first time in the history of humanity, the International Criminal Court has the power to order individuals to pay reparations to victims. Victims file a written application for reparation and the court can either order the convicted to pay the appropriate reparation to the victim or the victim's beneficiary, or can order that reparation be paid to a victims' fund, which was set up by the Assembly of State Parties in 2002.

As you will see from my submission, it is my strong belief that the International Criminal Court represents a serious means by which accountability can be achieved for gender crimes against women. There are very good indications that this will be the case arising from the first indictments that were issued by the court just this year. I think they were made available to the public in October. All the indictments against the leaders of the Lord's Resistance Army in Uganda dealt significantly with gender crimes, and indeed it was a pleasure to see that the first two counts in both the indictments for the commander and the sub-commander of the Lord's Resistance Army were for rape and inducement to rape.

In order for this court to deal comprehensively with my submission, I have taken the liberty of drafting an order that this court may wish to make, dealing with how the Yugoslav and Rwanda tribunals have taken forward the jurisprudence and how the International Criminal Court could build on these advances to ensure accountability for women. I will not read the order, but will leave it to the judges to

use or reject what I have suggested.

The idea behind this order, though, is to ensure that this court can have a dialogue with the prosecutor's office and with the judges of the International Criminal Court to urge them to use the tools that have been given to them, both by their statute and by the judgments of the Yugoslav and Rwanda tribunals, to ensure gender justice for women. It is true that the International Criminal Court can only deal with a few of the top perpetrators of crimes. They can only deal with the tip of the iceberg, but I submit today that that is an incredibly important function and that it is a way in which many, many women can feel that they have achieved accountability for gender crimes committed against them.

Thank you.

Ezeilo: Thank you very much for that erudite presentation. You have really given us an interesting jurisprudence and the revolution that has taken place with the International Criminal Tribunals in terms of accountability.

I still have a problem though because in reality, how would women be able to access these courts, tribunals, particularly when the perpetrators who have raped them, the perpetrators of the crime are not known to them? How would they be able to get redress? If the state is not yet a party to the ICC, how would they be able to bring these states? I would like to know whether the gender crimes as defined or recognized by the ICC has attained the status of customary international law, so that it wouldn't matter if the state has not yet ratified the treaty.

Dehon: Let me deal with your second question first. It is obviously a difficulty for the court where a state has not ratified the treaty and it does stand outside the jurisdiction of the court, so the court is not the main tool that will be used for accountability for states that have not ratified.

However, as your question suggests and as I believe is now a growing consensus among both international practitioners and academics, crimes against women, most gender crimes, have been recognized to attain customary law status, the status of *jus cogens*, so that perpetrators of such crimes can be brought to book through other legal mechanisms, such as prosecutions in third coun-

tries under universal jurisdiction, possibly even prosecutions under international human rights laws.

There was a case recently in front of the European Court of Human Rights where the jurisprudence of the tribunals was used to say that the country of Bulgaria had a prosecutorial policy of rape that discriminated against women who didn't put up a serious physical fight or had physical force inflicted on them. And the court was prepared to say that the human rights of those women were infringed by that strategy.

So theoretically if the courts are willing to take international law into account in human rights cases, human rights claims can be brought against perpetrators, not just claims under international humanitarian law.

Ezeilo: What was the title of that case?

Dehon: The case is called M.C. v. Bulgaria. Now, the first part of your question was about how the court can ensure that victims and witnesses know that there's been accountability, and how it can go out possibly and find those victims. I would refer you again to my submissions on the duty that exists on the Office of the Prosecutor. I imagine that those duties were drafted by the drafters of the rules because they wanted to ensure that the prosecutor's office would be proactive in going out and seeking victims of gender crimes. It's very often the case that in a situation of conflict in a society specifically where men take the lead and where men are community leaders, that when investigators go out, their first point of contact is with the male leader of the community. And the duty on the prosecutor's office to seek out women in order to ensure that their stories are heard is a way in which that is going to be counteracted. It seems certainly that in the first prosecutions unveiled by the criminal court that that has been the case because gender crimes form a big part of that prosecution.

Goldstone: If I could just follow up on that. Perhaps I can preface my main question by asking a first question, and that is, are you aware of any use made in domestic law of these exciting developments in the international tribunals?

Dehon: I have to say, judge, that that is not my main area of expertise. I do know that there were

cases that were brought in Belgium against some of the perpetrators of the Rwanda genocide. I do not know the details of how that prosecution was brought. I know it was brought under universal jurisdiction, and I would assume that some mention was made of the Yugoslav and Rwandan tribunals' decisions.

Goldstone: It seems to me the primary duty is on the bar, on national bars. I think judges are too often given praise and too often criticized, for usually what they do is given to them in the course of argument. And when they fail to do things it's because it hasn't been given to them by counsel. Isn't this a matter that should be drawn to the attention of national bars, that this is an area that they should educate their members in? Because their members haven't been educated – these are very recent developments.

Dehon: Yes, absolutely. I would agree with you wholeheartedly and, in fact, the reason the decision in *M.C. v. Bulgaria* before the European Court of Human Rights made reference to the international criminal tribunals was because of an *amicus curiae* submission by a group called INTERIGHTS [International Centre for the Legal Protection of Human Rights], that was drafted by women activists and that specifically made reference to the jurisprudence, and then the court was able to take that into account. You're right in that I think the international bar association and then those bar associations in countries that deal a lot with these sorts of crimes should have some kind of training procedure or should have some sort of notification process to ensure that their members are made aware of this jurisprudence and are actively encouraged to use it where gender crimes are involved.

Bensouda: Just one comment. Thank you very much for your presentation. I think it is a true reflection of what is actually going on at the ICC now. Thank you. I have a little question to ask. This has to deal with victims. Who, in your view, are the victims, in view of the participation and reparations provisions of the International Criminal Court's statute? Who would you think are the victims? Are they the ones who are affected by an indictment that we bring, or is it the general population of the affected state? What is your thinking?

Dehon: This is a very difficult question. And I think that in order for the reparations provisions in the

court's statute to make sense, one cannot afford to define victims – when you're dealing with reparations – in a very broad manner, because it will be impossible for the court and for the perpetrators, even in they're wealthy perpetrators, to give reparations to all the victims.

I would imagine the court might resolve this problem by having possibly different tiers of victims: a primary victim who had suffered gender violence herself; a secondary victim, maybe somebody who witnessed gender violence; and then there might be other victims because the gender violence ricochets through the family and then the community. It may be that those family and community victims might be too far removed in order for reparation to be made, but are not too far removed in order for the court to take their stories into account in giving the facts of the case, for example.

Judges: Thank you.

LIMITS OF TRIBUNALS

Katrina Anderson –

Documentation Center of Cambodia¹⁹



Distinguished judges, human rights defenders and members of the audience, good morning. Thank you to the Joan B. Kroc Institute for Peace & Justice for allowing me to speak again to you today. Yesterday, I spoke about the ways to promote reconciliation in Cambodia largely through the use of non-prosecutorial strategies, such as the use of documentary films as a means for providing the victims of sexualized violence a safer path to move toward reconciliation individually and on a community-based level. Today, I will analyze the potential of the Khmer Rouge tribunal to address sexualized violence under the reign of the Khmer Rouge that Cambodia experienced from 1975 to 1979.

While the Khmer Rouge tribunal is a welcome sign that impunity to the Khmer Rouge abuses may finally be addressed, I submit that this tribunal is seriously flawed in many ways in its structure and its mandate, especially when it comes to addressing sexualized violence. Nonetheless, I will address its potential to address these crimes and I will also address the problems that will undoubtedly be faced if gender-based crimes are prosecuted before the tribunal, and suggest some approaches that the international community can take in order to ensure that a robust justice for the victim is paid through the Khmer Rouge tribunal. Before I begin, however, I would just like to state that the views that I express today are not necessarily those of the Documentation Center.

History of the Khmer Rouge Tribunal

The Khmer Rouge tribunal, which I will call the Extraordinary Chambers [of the Courts of Cambodia],

its official name, was created by a compromised statute that represents a long, painful, protracted negotiating process with the United Nations. Remember that the international community did not address the crimes of the Khmer Rouge until 19 years after the regime fell, when the United Nations appointed a Group of Experts to evaluate the evidence and propose options for accountability. The core recommendation of that Group of Experts – that the United Nations establish a fully international tribunal – was outright rejected by the Cambodian government to aim to preserve sovereignty over the process of accountability.

A long period of negotiations ensued where the political elite used the delay to their own advantage, in order to perpetuate the version of history that would not implicate their own members in the crimes. This version of history asserts that only the standing committee of the Khmer Rouge, totaling seven people, is responsible for the atrocities under the regime and that current members of the government had nothing to do with the regime's crimes. This delay tactic worked in the end and a statute for the tribunal was drafted in the compromised measure in order to keep the Cambodian government at the bargaining table.

The statute limits personal jurisdiction of the tribunal over those defendants who were “senior leaders of the Khmer Rouge” and those most responsible for the crimes. This directly contradicts what the U.N. Group of Experts had proposed, which included jurisdiction over senior leaders as well as lower level soldiers who were implicated in the most serious atrocities.

Problems with the Tribunal

The statute therefore assumes that the Khmer Rouge functions with the top-down leadership structure, where the standing committee dictated commands to the middle level commanders for each zone, who in turn directed their subordinates in each village to perpetrate the crimes. Some support this version of history because it makes more sense from a moral perspective to hold accountable the “big fish,” or those who are in positions of power. The alternate version of history is that leadership in the Khmer Rouge is much less centralized and that most abuses resulted from lower level soldiers acting on their own volition, without the knowledge of senior leaders – this is the “small fish” theory.

19. For Anderson's earlier presentation, please see Chapter II.

The statute therefore assumes that the Khmer Rouge functions with the top-down leadership structure. ... The alternate version of history is that leadership in the Khmer Rouge is much less centralized and that most abuses resulted from lower level soldiers acting on their own volition, without the knowledge of senior leaders.

As I discussed yesterday, the Khmer Rouge standing committee issued a policy prohibiting rape and called for a strict punishment of any transgressor. Consequently, rape tended to occur in places where soldiers were unsupervised and could violate an order with impunity. But the statute that creates the Extraordinary Chambers precludes the possibility of exploring this alternate version of history. In other words, only senior leaders would be prosecuted for rape, not the lower level soldiers. If a senior leader did not commit rape personally, the leader could be held responsible for the crime of the subordinate under the theory of command responsibility. This theory applies if the subordinate was under the effective control of the commander: if the leader knew, or should have known, that subordinates were committing abuses, and the leader either failed to prevent those abuses or to punish the perpetrator.

It will be extremely difficult to hold Khmer Rouge leaders accountable for rape under the theory of command responsibility. The evidence shows that senior leaders were probably unaware of the rape committed by the soldiers under their command because the soldiers raped the women who were sent to be killed, and the killing covered up the crime. Moreover, the Khmer Rouge policy for the prohibition of rape will make it difficult to prove the leader should have known about the rape committed by soldiers, because there would have been no reason to suspect disobedience.

Another problem with the statute is that gender-based crimes are not explicitly included in the language of it. Rape is excluded as one of the

domestic crimes under the statute, despite the fact that the law that it was modeled after, the criminal law of Cambodia during the time of the Khmer Rouge, did in fact criminalize rape. However, torture is listed as a domestic crime and it would be possible for the prosecutor to argue that rape or other gender-based crimes constitute torture.

However, this argument ignores the gender-based character of rape, which demands particularized remedies for the psychological and physical harm caused by the rape. And I would also note that it does not serve as a deterrent to people who might not recognize rape as a separate crime. Of course, the prosecutor may argue that rape rises to the level of an international crime, but it is not at all clear that such an argument will be easy to prove.

Genocide requires a specific intent to commit one of the enumerated acts of genocide – the intent is to destroy in whole or in part a protected group. Here, however, the intent requirement would almost certainly fail, because the order of the senior leaders explicitly tells the soldiers not to commit rape or other sexualized violence.

Whether the crimes that occurred in Cambodia can be considered genocide is a fiercely debated issue since the definition of genocide under the Genocide Convention requires the act to be directed at one of the protected groups – national, ethnic, racial or religious. The drafters of the convention did not envision a conflict such as Cambodia, when Cambodian nationals attacked other Cambodian nationals.

I think there is a strong argument that some acts of the Khmer Rouge constituted genocide, such as those directed toward ethnic minority groups. But there is a weak legal argument here that the Khmer Rouge committed rape as genocide when directed at women who were Cambodian nationals.

Two issues also arise with respect to prosecuting rape as a crime against humanity before the Extraordinary Chambers. First, although crimes against humanity do not require a nexus to armed conflict today, it is debatable that this nexus was required in 1975 when these crimes occurred. If it was required, it would be difficult to prove that the atrocities occurred in connection to the armed conflict. The Khmer Rouge committed its crimes while trying to revolutionize Cambodian society,

not in connection to civil war or fighting an external enemy.

Second, crimes against humanity require that the crimes be systematic and widespread. It is because of this element that more research into gender-based crimes in Cambodia is desperately needed. As of now, it does not appear that rape was systematic because it was never ordered to be used as a weapon of war; rather, it was perceived by the soldiers as a spoilage of war that must be kept hidden from sight.

Finally, crimes against humanity is defined narrowly in the statute, only encompassing one form of sexualized violence, that of rape – not including the ICTY's or ICTR's more expansive definitions that my colleague talked about earlier.

As for war crimes, there is also a great debate about whether the armed conflict in Cambodia was of an international or internal character. If it can be characterized as an international armed conflict, the grave breaches provision of the Geneva Conventions apply at the very least where the crimes occurred within the areas where fighting with the Vietnamese or other actors may have occurred.

If the conflict is categorized as an internal armed conflict, however, the grave breaches provision does not apply. At the time, Cambodia was not a party to Protocol II on non-international armed conflict, and it is not clear whether the international community had recognized individual criminality for violation of Common Article 3. I will not go into the factual debate about what type of conflict best describes the conflict in Cambodia. There are places where the language in the statute will limit the prosecution of rape as a war crime, nonetheless.

While rape was not listed under the grave breaches provision, the scope of these crimes has been expanded to include rape, as is often mentioned today. The good news is that the Extraordinary Chambers statute does not limit the act, only the enumerated one in the statute, leaving the door open for other acts to be considered war crimes. But as is arguing that rape is a form of torture rather than a separate crime in itself, here a prosecutor would have to argue that rape and other forms of sexualized violence comprise inhumane treatment, or great suffering, or serious injury to body or health – again, not categorizing rape for

... here a prosecutor would have to argue that rape and other forms of sexualized violence comprise inhumane treatment, or great suffering, or serious injury to body or health – again, not categorizing rape for what it is and not advancing our understanding of the nature of sexualized violence ...

what it is and not advancing our understanding of the nature of sexualized violence or adequately addressing the harms to rape victims in Cambodia.

Even if the prosecutor can survive the evidentiary hurdles and prosecute rape before the Extraordinary Chambers, the legal culture is so biased against the victims of rape in Cambodia that I question whether the Extraordinary Chambers will be able to obtain any prosecutions of rape or other forms of sexualized violence whatsoever.

While incidence of rape increases in Cambodia every year, the corrupt Cambodian judicial sys-

While incidence of rape increases in Cambodia every year, the corrupt Cambodian judicial system has erected enormous barriers to any victims seeking justice.

tem has erected enormous barriers to any victims seeking justice. This is a system whose solution to the crime of rape is, in contradiction to Cambodian law, for law enforcement officers to broker settlements between the parties, including forcing victims to accept monetary compensation or even a forced marriage to their perpetrator. In the rarer case where the victim chooses to initiate a criminal case against the perpetrator, she must pay bribes to do so, even though the system formally requires the state to shoulder the burden of the cost.

The key piece of evidence in a rape case is a medical certificate, validating that the rape oc-

curred, but this can only be obtained by a doctor appointed by the court. Such doctors are easily bribed. Moreover, the social stigma against rape prevents women from reporting rape for fear of bringing shame upon themselves and their family as well as physical violence undertaken in revenge by the perpetrator. It is impossible to bring a case anonymously, as names of the victims are published in Cambodian newspapers.

Finally, the lack of judicial education on issues surrounding sexualized violence will not be easy to change before the Extraordinary Chambers commences. Judges have been known to acquit rape cases based on completely erroneous grounds, such as when the victim is not a virgin or when the perpetrator is not related to the victim. In 2004, judges sentenced perpetrators in only 7 percent of rape cases, demonstrating in part that judges often refuse to set aside their personal beliefs and apply the law. Even more telling is that out of 25 cases brought to trial in 2003 for accusing rape against state officials, none resulted in conviction.

These barriers create profound public distress for the judiciary. Although there is hope that the Extraordinary Chambers will be able to educate Cambodian judges on applying the law correctly and treating victims with respect, this is still at the end of the day a Cambodian tribunal. Whether rape is prosecuted will depend in large part on whether victims are willing to report the crime after such a long period of time, when it may come at a tremendous cost to themselves and their family and when no protections as of yet exist to ensure their safety and their dignity.

The last major hurdle is the collection of evidence for cases of sexualized violence, considering the passing of time since these events occurred almost 30 years ago. Any physical evidence that might have existed has deteriorated to the point of uselessness, and testimonial evidence is of limited use due to the death of victims and the fading of witness memory. Moreover, the emotional and psychological impact of rape may prevent women from breaking their silence even after all this time, especially if they do not believe that their testimony will result in conviction.

Requests of the Court

There are many reasons why the Extraordinary Chambers should prosecute rape and other gender-based crimes, as my colleague mentioned



The court building of the Extraordinary Chambers in the Courts of Cambodia (photograph provided courtesy of the ECCC)

this morning. To name just a few, the Extraordinary Chambers could provide some sense of justice to the victim, it could create an accurate historical record of the crime, it could educate Cambodian judges about working with victims and lead to a better application of and reform of Cambodia's rape laws.

I have four main requests to the court to ensure that sexualized violence is not forgotten at the Extraordinary Chambers. First, ensure that the rules of procedure and evidence incorporate valuable lessons learned from the ICTY and the ICTR, such as making victims' prior sexual conduct inadmissible, and acknowledging that consent is not a defense to rape when coercive conditions are present.

As of yet, no rules of procedures and evidence have been adopted for this tribunal, a fact that has generated much discussion and anxiety among human rights defenders. These defenders are trying to urge the Cambodian government to adopt rules modeled after the International Criminal Court, while Cambodia is arguing that its own laws of criminal procedure should apply, which contain many fewer protections for the victims. The Extraordinary Chambers statute itself calls for the protection of witnesses, but provides only one procedure to accomplish this, in camera proceedings for judges to review sensitive evidence. The rules of procedure should specify measures that will provide for victims' security, prevent further re-traumatization and ensure victims' privacy.

Second, to provide comprehensive care, the Extraordinary Chambers should establish a Victims and Witnesses Unit, along the lines of the International Criminal Court, that can coordinate the spe-

cial needs of victims. The Extraordinary Chambers statute currently designates three offices – investigating judges, co-prosecutors and judges – to share the responsibility of caring for the victim. The lack of clearly designated roles reveals that caring for victims was not a priority for the drafters of the Extraordinary Chambers statute. However, the Extraordinary Chambers can rectify this problem by creating a unit that will provide comprehensive care and ensure that a victim's needs do not fall through the bureaucratic crack.

The third recommendation is for the international community to provide gender-sensitivity training to judges, lawyers and court officials involved in the Extraordinary Chambers. Important lessons can be drawn from previous tribunals in this regard. To help create a safe environment at the Extraordinary Chambers, investigators and prosecutors must be trained to ask questions in a way that empower women to tell their stories.

Also, no trial should re-traumatize a woman who has suffered from sexual violence. Tribunal officials should communicate to the women that they are the actors who hold the power to testify or not to testify. All other protective measures for victims and witnesses should stem from this baseline.

Although many criticize the failure over the years

... the problem is not the Cambodian judiciary incapacity to analyze the law or apply it fairly, but rather the determination of key political actors in Cambodia to use the law for their own interest.

of various efforts that have attempted to improve the capacity of the Cambodian judiciary, despite many attempts to train judiciary to apply international standards of a fair trial, the problem is not the Cambodian judiciary incapacity to analyze the law or apply it fairly, but rather the determination of key political actors in Cambodia to use the law for their own interest. The Extraordinary Chambers can shine a spotlight on Cambodia's legal system in some helpful ways.

Finally, women should be appointed to serve in high-level capacities of the tribunal, which will likely increase the attention to crimes of sexualized violence, as we also discussed this morning with appointing the judges for the International Criminal Court and as occurred in Rwanda.

In conclusion, I know the international community has a great deal of fatigue at this point for the Khmer Rouge tribunal in general, before it has even begun. Many doubt if it will have the capacity to hold fair trials or to bring to justice the most culpable actors. However, this is not an excuse to step aside at this point and to let impunity continue. Indeed, the delay in bringing justice to Cambodia was largely due to the apathy on the part of the international community. Let's not lose this moment of opportunity.

I ask the court to use its influence to keep the focus on bringing justice to Cambodia, especially for the victims of sexualized violence who have been silent and forgotten for too long.

Thank you.

Goldstone: I'd like to ask you one question. It's been my experience, and it may be skewed, it may not be representative, but my experience has taught me that survivors of gender crimes in a war situation are far more anxious and willing to testify than rape victims in a non-war situation. Their victimization is part of something larger, whether it's ethnic cleansing or other horrible forms of warfare. I was wondering what your experience was either in Cambodia or elsewhere. I think it's important to recognize that because I think it's, to that extent, easier for a prosecutor in an international court dealing with a war situation than it may be with law enforcement officials in a national situation.

Anderson: I would agree with you in general given the experience we've seen before in the Rwanda and Yugoslav tribunals, but I think Cambodia's context is so different in several ways. First of all these crimes occurred so long ago that women have buried these crimes to a degree that was not seen before in other tribunals. There was no media attention that also accompanied the crimes of rape in Rwanda and Yugoslavia. There was tremendous social stigma to prevent women from coming forward at the time and since.

And again, the policy in Cambodia that strictly



Ezeilo poses a question to Katrina Anderson

prohibited rape indicated to the world that these rapes did not happen, and so it put the onus on the victim to come forward to rebuke that assumption. I think the context here is really different particularly given the social context of Cambodia where women are still stigmatized today in the national criminal system for coming forward. I think it will be extremely difficult for women to overcome that burden.

Waller: When you mentioned gender sensitivity training, could you go into a little detail about what that would be? Are these Cambodian feminists developing techniques?

Anderson: To my knowledge there hasn't been movement among the women's groups in Cambodia to come up with criteria for those trainings in particular, although there has been movement in the NGO community, the international community and the Cambodian NGO community, to make recommendations to the tribunal to adopt those procedures.

Waller: By people who are very familiar with Cambodian culture?

Anderson: More by international legal experts who have seen the benefit of these trainings before other tribunals, in particular, trainings to investigators who are going out and collecting the evidence of these crimes: make sure that the appropriate level of attention is paid to gender-based crimes.

Waller: And who or what institutions would you say make up the international community? This is another term that I'd like to know who's behind it, what's behind it.

Anderson: Of course the United Nations, as the United Nations negotiated the treaty with the Cambodian government. But I think now the number of actors has expanded to include the international justice community, NGOs who have been working with the official task force in Cambodia to devise rules of procedure and evidence, to make recommendations for the protection of witnesses.

Waller: Would it help if there were more actors involved?

Anderson: There's attempt now at coordination of these actors, which I think is proving to be much more helpful than what happened originally when there was no such coordination. I don't think it's necessarily a function of having more actors involved, but having more resources devoted to this.

Ezeilo: I haven't seen a copy of this treaty that brought into existence this Extraordinary Chambers, but I'm wondering whether they're permitted to cite or use some of the international law, for example, the laws of war. I'd like to know whether Cambodia has ratified the ICC or even CEDAW, because if they have it will make a lot of difference in terms of the ability of lawyers to raise some of these issues in the tribunal. And if those who have appeared before the tribunal and have apparently gotten justice, can they still take their case further beyond the chambers?

For example, on the issue of rape, usually the sentencing is ridiculous – it's not just in Cambodia, but also in most countries all over the world. It's really abhorrent. What you see now I imagine is countries are beginning to reform their laws to provide minimum sentencing, for example, in cases of rapes. If a woman feels aggrieved that the sentence is not enough to assuage her or to give her justice and she's interested in taking the case further, can she go to other international tribunals?

Anderson: Well, first on the statute, I suppose I should have explained more clearly that the Extraordinary Chambers is a hybrid tribunal. But it's different than some other hybrid tribunals that we've seen around the world because domes-

tic law dominates; it's the first source of law. So where domestic law does not cover one of the crimes, international law is then used to supplement domestic law.

In the drafting of this statute, many attempts were made to incorporate international standards, international human rights standards and criminal standards into the statute. But again, it emerged after such a long period of negotiations that it's a compromise measure. Judges will first apply Cambodian law on rape and torture, which do not have the definitions under international law.

Furthermore, the law that applies must be not Cambodia's law today, but Cambodia's law as it existed in 1975, which in fact was the law from 1956. So we're talking about going back a long time. It's very difficult to incorporate those standards under a 1956 reading of the law.

In terms of empowering Cambodian women to seek other avenues: Cambodia is not a party to CEDAW, so it's very difficult for them to take advantage of these international mechanisms.

Judges: Thank you.

WAR CRIMES, GENDER AND HUMAN RIGHTS LAW

Susana SáCouto –

War Crimes Research Office, American University,
Washington College of Law



Susana SáCouto is the director of the War Crimes Research Office (WCRO) at American University, Washington College of Law. Prior to joining the WCRO, SáCouto was the director of legal services for Women Empowered Against Violence, a nonprofit organization aiding survivors of domestic violence in the Washington, D.C. metropolitan area. She has worked with the Office of the Prosecutor at the International Criminal Tribunal for the former Yugoslavia and with the Center for Human Rights Legal Action in Guatemala.

Good afternoon. My name is Susana SáCouto and I direct an office called the War Crimes Research Office at American University, Washington College of Law. The comments I will share with you here today are my own. Before I begin I want also to acknowledge and recognize and thank the women who testified here for their tremendous courage in coming forward and sharing their stories with us. I also thank the judges for their contribution today, and of course, the Kroc Institute for putting this together.

In the past decade, and particularly since 1998, there has been, as we've heard today from colleagues who have spoken before me, an incredible transformation in the treatment of sexual and gender-based violence. Before, these crimes committed exclusively or disproportionately against women and girls in times of conflict were largely either ignored or at most treated as secondary to

other crimes. While rape was actually recognized as a violation of the law of war, and some would argue that this dates back to the 15th century, international humanitarian law has traditionally linked sexual violence with crimes against honor or dignity, rather than crimes of violence.

However, overwhelming evidence of the systematic raping of women in conflicts over the last decade has actually helped to create unprecedented levels of awareness of rape as a method of war and a tool of repression. As a result, great strides have been made in the condemnation and prosecution of sexual and gender-based violence. Indeed, rape and other forms of sexual violence have been successfully prosecuted, as we heard today, as war crimes, as crimes against humanity and as an act of genocide by the ad hoc tribunals for the former Yugoslavia and Rwanda. For the most part, these ad hoc tribunals have approached the issue of sexual violence as constituting the *actus reus*, or the material act of the crime.

What remains largely unexplored, however, is a question that I think deserves some attention on which I will focus my remarks today. That question is whether the systematic and widespread use of rape and other forms of sexual violence tells us anything about the perpetrators' mental state. In other words, can the *mens rea*, or the mental element of these crimes – particularly of genocide, where I will focus today – tell us anything at least in part? Can we derive the mental element, at least in part, from pattern evidence of sexual violence?

It's an important question because it may affect how crimes that disproportionately affect women are charged, and therefore, whether they are adequately investigated and prosecuted. The question is particularly relevant in light of the findings made earlier this year by the U.N. Commission of Experts tasked with determining whether there was sufficient evidence to conclude that genocide had occurred in the Darfur region of Sudan. Despite finding that rapes had been used to terrorize, demoralize and humiliate the targeted population, the commission concluded that there was not enough evidence of genocidal intent. Had they considered the question of what pattern evidence of sexual violence tells us about perpetrators' intent, they might have come to a different conclusion.

My sense is that despite increased accountability

for crimes against women, there remains a limited understanding of the various functions that mass sexual and gender-based violence play, particularly in times of conflict. Sexual violence can certainly function – as the landmark case we heard about, Akayesu, recognized – as a means by which eventually to destroy a particular group of people. Indeed, mass sexual violence can result in countless other injuries and permanent gynecological injury to large numbers of women in a particular group, thereby destroying their capacity to reproduce and ultimately, the potential of the group to survive.

But I would argue that mass rape and other forms of sexual violence can arguably also function as a message to the group. When committed on a mass scale and in certain patterns, such as in front of other family members or the public, sexual violence can communicate an intent to destroy the very foundation of the group. This is particularly true in social, cultural or religious communities where acts of sexual violence not only shame and humiliate the victim and her family, but also tear at the fabric of the entire community.

One commentator who has written about sexual-based violence and the Holocaust has noted, and here she was referring to public nudity and the removal of bodily hair for selection into the concentration camps, in these types of contexts there is “no confusion between victim and perpetrator over the content of the message.” She says, “Taking away a woman’s clothing and exposing her to the gaze of unfamiliar men was a crude and effective act of sexual violation. Nudity in a public context was an abnormal and grotesque experience for this woman, and the perpetrators knew it would be experienced by the woman as such.” She further notes that because most were religious women, these acts were all the more shameful and humiliating, and therefore, “organically linked to the enterprise of cultural eradication in which the destruction of the carriers of the community was an essential plank of the policy.”

Genocidal Intent

It seems clear, as this scholar suggests, that when committed on a mass scale and in certain patterns, sexual and gender-based violence have what she terms “communicative value,” and as such, do have something to say about the intent of the perpetrator. The prosecution of genocide in particular involves two basic elements that we’ve heard about today: the *actus reus*, or the actual

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physical act by which genocide can be committed, and the *mens rea*, the perpetrators’ genocidal intent.

It is this last element, the specific intent to destroy a national, ethnic, racial or religious group, that has proven to be an extremely difficult task. In fact, it was the problem surrounding proof of the *mens rea* element of genocide that precluded the Commission of Experts from finding that there had been a state policy of genocide in Darfur. Proving genocidal intent demands a showing that perpetrators not only killed or caused serious injury to members of a particular group, but actually that they did so because they sought to destroy that group, in whole or in part. Again, it is the specific intent that in part is said to distinguish genocide from other crimes, such as crimes against humanity.

Recognizing the difficulty of proving genocidal intent, the ad hoc criminal tribunals have deter-

... the ad hoc criminal tribunals have determined that in the absence of the ‘smoking gun,’ the confession, genocidal intent can actually be inferred from other facts that may be easier to prove.

mined that in the absence of the “smoking gun,” the confession, genocidal intent can actually be inferred from other facts that may be easier to prove. For example, tribunals have looked to statements or propaganda condemning the group, acts of violence against cultural symbols associated with the group, policies of discrimination against a particular group, sheer number of victims, scale of

atrocities, the patterns and systematicity of violence against a particular group and perhaps the brutality or gratuity of the violence employed.

Significantly, as articulated in one decision, genocidal intent can be inferred from the “perpetration of acts which violate or which perpetrators themselves considered a violation of the very foundation of the group.” It seems the character and nature of the acts in question, as well as the manner in which they are carried out, can constitute then strong evidence of intent. However, few cases have recognized the existence of systematic sexual violence as evidence of genocidal intent.

There is one notable exception and it was a decision in the case of Karadžić and Mladić a case before the ICTY. There, the ICTY trial chamber found that the specific nature of the means used to achieve the objective of “ethnic cleansing” in the Bosnia conflict, including the systematic rape of women, tended to show that the acts were designated to reach the very foundations of the group. Noting that the systematic rape of women was in some cases committed to transmit a new ethnic identity to the child, and in others, to dismember the group through terror and humiliation, the tribunal found that genocidal intent could be derived, at least in part, from the systematic rape of the kind perpetrated during the Bosnian conflict.

It seems logical, I would submit, that the tribunal would have come to this conclusion: All the sexual violence perpetrated against Bosnian Muslim and Bosnian Croat women during the conflict was intimately linked to the process of destruction of their ethnic group. The mass scale, the extremely public and humiliating nature of the rapes and the systematic manner in which they were committed clearly constitute facts which arguably violate the very foundation of the group.

I suggest that in Rwanda, similarly, the Tutsi women were raped in public, they were gang raped, they were raped using recurring methods, such as with foreign objects or in especially humiliating ways. And as the trial chamber in Akayesu, the case we talked about before, describes, acts of rape and sexual violence were committed solely against Tutsi women, many of whom were subjected to the worse public humiliation, mutilated and raped several times, often in public and often by more than one assailant.



Justice Goldstone questions Susana SáCouto

These patterns show that this was not the kind of rape that some would argue accompanies the

These patterns show that this was not the kind of rape that some would argue accompanies the lawlessness that exists in times of conflict.

lawlessness that exists in times of conflict. The account of victims in the conflicts in the former Yugoslavia and Rwanda suggest that these rapes were conducted in a systematic manner under a plan conceived to wipe out the victims' group. The tribunal in Akayesu concluded the rapes resulted in the physical and psychological destruction of the Tutsi women, their families and their communities. Recognizing the devastating impact of sexual violence, the tribunal emphasized that the sexual violence was a step in the process of destruction of the Tutsi group, destruction of the spirit, of the will to live and of life itself.

Although the judgment did not use sexual violence in its analysis of genocidal intent, the context and manner in which the rapes were committed suggests that the rapes themselves had what the commentator I spoke of earlier termed “communicative value.” Not only did the rapes result in severe physical injury, sometimes causing permanent gynecological injury and destroying women's capacity to reproduce, but some rapes also resulted in what both victim and perpetrator considered to be children of a new ethnicity. In patriarchal societies, such as in the Balkans, where the family name passes through the male, the perpetrators of rape no doubt knew that the victim and her community would experience forced pregnancy as a way to transmit a new ethnic identity to

the child. Perpetrated on a systematic scale, this pattern provides persuasive evidence, I would say, of intent to violate the very foundation of a group.

Second, having lived among many of their victims in societies which place a high value on chastity and purity of women, the perpetrators no doubt knew, and in their minds understood, that women raped or impregnated as a result of rape would likely be viewed in their own community as tainted and/or unworthy of marriage. There were reports, for instance, coming out of the former Yugoslavia in 1994 and '95 that some husbands abandoned their wives after learning that they had been raped.

These public and systematic rapes likely to result in the rejection and ostracizing of the victims by their families and communities arguably communicated a clear message that the perpetrators intended to destroy not only the individual victim's bodily integrity, but also the group's internal cohesion and capacity to exist as such.

Again, this type of non-verbal communication is arguably strong evidence of intent to destroy a group. As the tribunal noted in the Karadžić case, the fact that the rapes were "performed with an effort to displace the civilians and to increase the shame and humiliation of the victims and of the community" in order to force them to leave, was seen as evidence, again, of a clear link to the

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intended policy of "ethnic cleansing." The nature of these acts in combination with speeches justifying them and the massive scale of their destructive effect was deemed sufficient by the court by which to derive genocidal intent.

"In Whole or In Part"

There is a question that others have posed to me when I have talked about this, which is that genocide requires the intent to destroy the group in whole or in part. Violating the reproductive capac-



ICTY Courtroom (photograph provided courtesy of the ICTY)

ity of women in a certain community and tearing at the social fabric of that community through humiliation and terror: Is that sufficient to show an intent to destroy a group in whole or in part?

Now, although there is still much debate about the meaning of that phrase, according to some of the ICTY jurisprudence, the intention to destroy must target, if we're talking about in part, at least a substantial part of that group. And the tribunal in the ICTY went on to explain that "substantial part" could mean one of two things: a large majority of the group or a more limited number of persons selected for their impact on the group's disappearance, on the ability of the group to survive. Obviously, whether the destruction of a particular part of a group would have the necessary impact on the entire group's viability is not always easy to determine. However, it is certainly arguable that destroying the lives and/or reproductive capacity of a significant number of women of a particular group may threaten the future survival of that group.

In the Krstić case, for instance, an ICTY trial chamber recognized that the selective destruction of Bosnian Muslim men of military age in Srebrenica would have a lasting impact on the entire Bosnian Muslim group. As the chamber explained there, Bosnian Serb forces had to be aware of the catastrophic impact that the disappearance of two or three generations of men would have on the survival of a traditional patriarchal society. The Bosnian forces knew by the time they decided to kill all of the military-aged men, that the combination of those killings with the forceful transfer of women and children and elderly would inevitably result in the physical disappearance of the Bosnian Muslim population in Srebrenica. The chamber concluded that the destruction of Bosnian Muslim men of military age in Srebrenica in combination with other factors constituted, again,

strong evidence of intent to destroy the group of Bosnian Muslims as a whole.

I would suggest that, similarly, the perpetrators of mass rape in the former Yugoslavia and Rwanda had to be aware of the long-lasting impact sexual violence would have not only on individual women, many of whom were killed following the acts of sexual violence, but also on the capacity of the community as a whole to survive. Destruction of a significant part of the group through physical and psychological injuries, social stigmatization, isolation, as well as the communication of sexually transmitted diseases, constitutes, I would say, compelling evidence of the intent to destroy the group as a whole.

Why It Matters

The real question is why this matters? Why should we worry about the use of systematic rape and sexual violence as evidence of intent? As we know, the way in which criminal conduct is charged and prosecuted matters. It matters not only because of the symbolic value and the message that it sends – that crimes perpetrated exclusively or disproportionately against women and girls are just as serious as other international crimes – but also because sanctions for those convicted of genocide may be stiffer than for those convicted of other types of international crimes. I think without a full understanding of the various functions that sexual and gender-based violence perpetrated on a mass scale can play, these crimes are unlikely to be adequately charged. And again, this can affect how they're prosecuted, how they're investigated.

As I mentioned earlier, the report of the Commission of Experts on Darfur is a good example of this. The commission found evidence of genocidal intent lacking. It could have examined whether the nature, the scale and the context in which the sexual violence that occurred in Darfur was intended to communicate a message of destruction. But it didn't. Indeed, the commission's report failed to recognize the multiple functions that rape can play in a genocidal scheme.

As in Rwanda, rules of descent in Sudan trace identity through patrilineal lines. As a result, mass rape can be used as a way to communicate an intention to transmit a new identity to offspring and alter the ethnic makeup of a community. Although this pattern of sexual violence may well suggest

an intent to destroy the targeted group of non-Arab tribes, this issue was not addressed by the commission. Instead the commission focused its analysis on the fact that the perpetrators of the atrocities in Sudan targeted primarily young men feared to be rebels or potential rebels, and concluded therefore that the primary purpose of these attacks, as well as the forcible expulsion of large sections of the population from their villages, amounted to "counter-insurgency warfare."

In arriving at its conclusion that genocidal intent was lacking, the commission pointed out that not everyone who was targeted was killed. As ICTY jurisprudence has held, the failure to kill everyone in the group with whom the perpetrator comes into contact does not negate other evidence of genocidal intent. In this case, the commission could have explored whether sexual violence committed against women and girls in these villages, in combination with the other abuses, indicated an intention to destroy the group, but it chose not to. Indeed, it did not examine whether the systematic rape it characterized itself in an earlier part of the report as a means to terrorize, demoralize and humiliate the population would inevitably weaken or destroy the lives of women in the group, including their reproductive capacity, and therefore, indicate an intent on the part of the perpetrators to destroy the group. Had it done so, the commission might have reached a different result.

Unfortunately, this is not the only example of a failure to recognize sexual violence as communicating an intent to destroy. Another example is what happened in the Foča case that we heard about earlier today [Kunarac]. The indictment in that case focused almost exclusively on sexual and gender related crimes committed in the town of Foča. The allegations included gang rapes, rapes in detention, rapes in public, rapes leading to permanent gynecological harm and rapes accompanied by statements such as, "You will now give birth to good Serbian children."

Based on Akayesu and Karadžić, the character and nature of the acts in question, as well as the manner and context in which they were carried out seem sufficient to permit an inference of genocidal intent. However, genocide was not charged. Though again I want to reiterate that this was a landmark indictment and a landmark decision because of its near exclusive focus on gender-based crimes, some commentators have noted that the

primary shortcoming of the indictment was the omission of an appropriate charge of genocide.

The prosecutor could have argued that the attempts of forcible impregnation and the public and systematic nature of the rapes in Foča suggested a clear link to the policy of destruction of the women and their associated group. Again, had the nature, scale and context in which sexual violence occurred been recognized not only as evidence of a criminal act, but also as evidence of intent, perhaps charges of genocide would have been filed.

Some would argue that highlighting the harm to the community done by crimes committed against

Some would argue that highlighting the harm to the community done by crimes committed against women risks diminishing the harm done to the individual victim. But I would submit that recognizing the many functions of sexual violence perpetrated on a mass scale does quite the opposite.

women risks diminishing the harm done to the individual victim. But I would submit that recognizing the many functions of sexual violence perpetrated on a mass scale does quite the opposite. Acknowledging the dual functionality of rape and sexual violence as being relevant to proving both the act of genocide and the mental state of the perpetrator helps to more accurately describe the multiple harms that women and their communities experience, and as the examples of Darfur and Foča show, to ensure that the harms are actually sanctioned in an appropriate way. As many of the testimonies we have heard today and yesterday have shown, mass or systematic gender-based violence sends a strong message to the victims and their communities.

I would submit therefore that sexual and gender-based violence have communicative value in times of conflict and as such, do have something to say about a perpetrator's mental state. In light of the incredible progress we heard here this morning made in the last decade regarding the recognition of sexual violence as an international crime,

we may want to seize this moment to really begin hearing more clearly what women are saying, understanding the harms they and their communities experience, and recognizing the many, many functions sexual violence can play in times of conflict, including the communicative value of those acts. Thank you.

Goldstone: I would just like to make one point, and let me make a disclosure immediately. I take full responsibility for the Foča indictment – I issued it. Let me just point out though a danger in, I think, a certain amount of oversimplifying the issue. Against whom could genocide be charged in the Foča indictment? The defendants were not leaders who developed policies and against whom one could have alleged and proved the necessary genocidal intent. It is a question of looking at who the defendant is in this situation and for that purpose.

The second point I would make is the danger in saying, "Well, charge it and see what happens." It can cause a setback to the whole endeavor if prosecutors bring weak cases of genocide that are dismissed. I think if one's furthering the endeavor and stretching the envelope, one must have strong cases in order to get judges to go along with it.

SáCouto: Absolutely. On your second point I couldn't agree with you more. I think that there are some risks that need to be avoided if you do not have the strong evidence to back up the indictment. I think on your first point, there has been an interesting traditional approach to the cases of genocide in which there is an examination of genocide, whether genocide occurred as a matter of state policy in a particular region, and a second analysis about whether an individual defendant had also genocidal intent in the context of the atrocities that occurred in that region. Sometimes, you are quite right, the evidence is not sufficient for both. It might be sufficient to conclude genocide occurred in the actual context, but not enough evidence for that particular individual. An interesting thing about the commission's report in Sudan is that they left open the question of whether the individuals may themselves have had genocidal intent, but at the same time, said there wasn't enough evidence to conclude that there was genocide generally speaking in Darfur.

Judges: Thank you.

USING THE INTER-AMERICAN SYSTEM TO PROTECT WOMEN'S RIGHTS

Roxanna Altholz – (formerly) Center for Justice and International Law



Roxanna Altholz served as a clinical lecturer at the International Human Rights Law Clinic at Boalt Hall in 2005. Altholz was also a U.N. legal advisor in Kosovo in 1999 to 2000, and a staff attorney at the Center for Justice and International Law (CEJIL) in Washington, D.C., where she represented hundreds of victims in human rights litigation before the Inter-American Court system.

Good afternoon. *Buenas tardes*. First, I would like to thank the organizers of this event for the important opportunity to listen to women's voices, and also this esteemed panel. I would also like to thank the organizers for inviting me to participate and speak about what the Inter-American system's role has been in holding governments accountable for human rights violations, specifically violations against women.

I do want to spend a little bit more time introducing myself. Right now I am a clinical lecturer at the International Human Rights Law Clinic at the University of California, Boalt Hall – the law school. But before that, I was a staff attorney at CEJIL, the Center for Justice and International Law. CEJIL is a regional organization dedicated exclusively to litigation before the Inter-American system. The organization has offices in Washington, D.C.; San Jose, Costa Rica; Brazil; and Argentina.

Established by the Organization of American States (OAS), the Inter-American system is comprised of the Inter-American Commission and the

Inter-American Court of Human Rights. Like its counterparts in Europe and in Africa, the commission and court provide recourse for individuals who have suffered human rights violations; they determine state responsibility for human rights violations.

For five years, I litigated cases representing victims of massacres, forced disappearances, extrajudicial killings, torture and discrimination, among other violations, before these bodies. My clients included those affected by the armed conflict in Colombia, Guatemala, El Salvador; children who were denied the right to education and nationality in the Dominican Republic; individuals who were arbitrarily detained and tortured in Ecuador and Mexico. As well as being direct victims of these crimes, many of my clients were the mothers, sisters, wives and daughters of victims of the most

As well as being direct victims of these crimes, many of my clients were the mothers, sisters, wives and daughters of victims of the most atrocious abuses imaginable, who despite overwhelming odds somehow reached the international arena.

atrocious abuses imaginable, who despite overwhelming odds somehow reached the international arena.

Overview of the Inter-American System in Relation to Women's Rights

In the Americas, women's lives are profoundly affected by not only state-sponsored violence, but also structural inequalities. Beginning in the mid-'90s, the Inter-American system began to seriously address the human rights situation of women in the Americas. In 1994, the OAS General Assembly approved the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, known as the Convention of Belém do Pará. This progressive convention recognizes the problem of violence against women as a manifestation of gender-based discrimination. In addition to creating a reporting mechanism, the convention also authorizes the Inter-American Commission to consider violations of the obliga-

tions of the instrument.

In that same year, in 1994, the Inter-American Commission also created the rapporteurship on the rights of women. The mandate of the rapporteurship is to analyze the extent to which member state law and practices which affect the rights of women comply with international obligations of equality and non-discrimination. The rapporteurship has fulfilled its mandate by conducting on-site visits and issuing reports and studies.

For example, the rapporteurship in 2002 actually traveled to Ciudad Juárez in Mexico to investigate reports of the killing of 268 girls and women, many of whom had been subjected to sexual violence before being murdered. Later that year, the rapporteur issued its findings, which focused on the failure of the state to investigate exhaustively the crimes. In noting the grave deficiencies in the investigation, the commission pointed to the attitude adopted by many officials of blaming the victims. According to public statements of certain highly placed officials, the victims wore short skirts, went out dancing, were easy and were prostitutes.

Although Mexico's national human rights institution had verified problems in the official response to the killings, the level of impunity remained high at the time of the rapporteur's visit. No official had been held accountable for the serious investigative deficiencies. The rapporteur's recommendations focused on addressing impunity, specifically on the need of the prosecutor's office to amplify technical capacity.

Beyond the studies and reports, the rapporteur also undertakes promotional activities in order to raise awareness among civil society about the rights of women.

However, my experience shows that the most important protective arm of the Inter-American system is the individual complaint mechanism. Under the American convention and other regional instruments, individuals can bring cases of human rights

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OAS Main Building (photograph provided courtesy of OAS)

violations against states that have ratified the appropriate instrument. The commission and court determine state responsibility for these violations, as well as the measures the state should adopt to repair the violations.

Reparations in the Inter-American system have a specific meaning. Jurisprudence of the Inter-American Court and of the Inter-American Commission

Jurisprudence of the Inter-American Court and of the Inter-American Commission has a very broad interpretation of what reparation means: It does not mean just economic compensation.

has a very broad interpretation of what reparation means: It does not mean just economic compensation. The orders of the court and the commission include ordering states to reform laws; to publicly acknowledge responsibility for crimes and ask for the victims' forgiveness; to create institutions – for example, in El Salvador after many children were disappeared during the conflict and after an Inter-American Court decision, El Salvador was ordered to create a genetic bank in order to trace what happened to these children and unite them with their families if possible. Courts have also ordered that decisions be published and disseminated so that society can also know what findings the court reached.

In the past decades, the commission has had the opportunity to consider a number of cases of women's rights involving violence against women:

the use of rape as torture, specifically; discriminatory laws and practice, including vaginal searches of women before entering prisons; forced sterilization; and questions of biased administration of justice. I would like to take this opportunity to briefly explore some of these specific cases because I think they illustrate the discrimination and inequality faced by women in the Americas.

Cases Regarding Women's Rights

In the first case I would like to mention, the Inter-American Court considered the incompatibility of certain provisions of Guatemala's civil code with the American Convention. Guatemalan law defined the roles of women and men in a marital union: Men were responsible for financially supporting the families, and women were responsible for the home and children. Given these roles, husbands were authorized to represent the marital union as well as the children, and administer the marital property. Another provision established that women could only pursue work outside the home if this did not prejudice her role as a wife and mother. The commission concluded that the relevant provisions of the civil code were incompatible with the American Convention and recommended their repeal.

The next case I would like to mention involves three young women who were arbitrarily detained in Chiapas, Mexico, and raped by members of the Mexican army. In 2001, the commission issued its final decision in the case, concluding that the Mexican state was responsible for the violation of the right to liberty, personal integrity and due process. In this important decision, the commission determined that the women had been raped in order to force them to confess to their membership to Ejército Zapatista de Liberación Nacional, and recognized the use of sexual violence as torture. Among the commission's recommendations were an order for the state to exhaustively investigate the rapes and to punish the perpetrators.

The next case I would like to discuss was presented on behalf of Maria de Pena Maja Fernandez against Brazil. It illustrates states' failure to exhaustively investigate domestic violence, prosecute and punish those responsible. In 1983, Maria de Pena was shot by her husband and left paraplegic. Two weeks later, he tried to electrocute her. Eight years passed before the case was brought before a jury. de Pena's husband was eventually sentenced to 10 years in jail and

remained free while appeals dragged on for three more years. Finally, when an arrest warrant was issued against him, police did not execute it. He was a well-known college professor, so everyone knew where he was. They would not execute the arrest warrant.

In its final report, the commission determined that Brazil had violated Maria de Pena's right to an effective judicial remedy, as well as the Convention of Belém do Pará. This is the first decision, and the only decision, the commission has reached

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finding a violation of the Convention of Belém do Pará. This case is a disturbing but accurate example of how domestic violence cases are investigated and prosecuted in the Americas.

What does all this mean for women's lives? Reports and studies articulate standards related to the rights of women and provide states with clear understanding of laws and practices which constitute *de jure* or *de facto* violations of women's rights. By formulating recommendations, the Inter-American Commission has also identified the measures a state should adopt to address these violations.

The individual complaint mechanism, the individual petitions, is a powerful tool to expose state responsibility for human rights violations. The women's movement has used it effectively. Not only do the cases shame the state, but they also can serve to raise awareness about an issue, and also serve as a rallying point for advocates. Decisions by the

Decisions by the commission and the court can be catalysts for real structural change.

commission and the court can be catalysts for real structural change. For example, as a result of the case I described against Guatemala, the Guate-

malan government adopted a series of important reforms to civil code and repealed many of the offending provisions.

Challenges for the System

However, the Inter-American system really has a long way to go. Some of the challenges the system faces are specific to the rights of women, and others are more general to the system. Beginning with the ones more general to the system, states – including the United States and Canada – have not ratified the American convention or accepted the jurisdiction of the Inter-American Court. As long as powerful actors like the United States remain outside, the full potential of the system cannot be realized.

Second, both the commission and the court suffer from severe budget restraints. The OAS only allocates 6 percent of its overall budget to the commission and the court. The commission and the court have been forced to seek funding sources in order to process the more than 1,000 pending cases, conduct its onsite visits, its promotional activities and issue reports. It is depressing for advocates when you see there are decisions and rulings published and on the back you see the emblem of the European Union.

There are also significant delays in these cases. Some of these cases have been litigated before the Inter-American system for 10 years, and this is after exhausting domestic remedies before national courts. Now, in part these delays are explained by the budget restraints, but in part there are also organizational issues.

Other challenges include the lack of legal aid. As opposed to the European system, there is no legal aid fund in the Americas; therefore, only a few organizations and a few individuals can garnish the resources to actually have access to the system. CEJIL and other organizations have been very active in pushing that the OAS establish a legal aid fund to make the system more accessible.

The big million dollar question is that there is no enforcement mechanism. The OAS member states, unfortunately, have been very hesitant to take seriously their roles as collective guarantors of human rights in the Americas.

In addition to these issues, the commission and the court are not gender diverse and there ex-

ists cultural resistance to incorporating a gender perspective. By this I really mean two things. First, beginning in December, there will be no woman commissioner. We count ourselves very lucky if one of the seven commissioners is a woman. But it is not enough just to have commissioners who are women; women and men must bring a gender perspective to their positions. Second, in considering cases, commissioners often do not regard these violations from a gender perspective.

To illustrate this point, I would like to talk about a case I began litigating in 2000 on behalf of a woman named Alba Lucía Rodríguez Cardona against Colombia. She was a young woman, 19 years old, who was raped. She did not tell her family that the rape resulted in pregnancy. One night she found herself in the bathroom delivering her child. The child was born dead. She was taken to the hospital because she began to hemorrhage. In the hospital, the doctor approached her and approached her family and said, “Well, where is the child? This woman has obviously given birth.” They brought the doctor, her treating physician, the child. The physician looked at the child and said, “I know what happened here.”

He locked himself in a room with Alba Lucia who was still hemorrhaging, and came out of the room a few minutes later saying that she had confessed, she killed the child. She lived in a small town near Medellín, Colombia. She was taken from the hospital to the courthouse in a small town in handcuffs. She was later sentenced to 44 years in prison. Longer than most *narcotraficantes*, paramilitaries or war criminals in Colombia, she received the

Longer than most narcotraficantes, paramilitaries or war criminals in Colombia, she received the longest sentence in Colombian history. She was raped, she was single, she was pregnant and she was accused of killing her child ...

longest sentence in Colombian history. She was raped, she was single, she was pregnant and she was accused of killing her child: Worst sins in a Catholic country you cannot be accused of.

When this case was presented before domestic courts, the judges would say things like, “We don’t believe her story that she was raped because she said that she was raped in three hours. It’s impossible for a woman to be raped over three hours.” They said, “She is an ignorant *campesina*. She’s obviously lying.” When we brought the case before the Inter-American system, it was very difficult to argue, to convince the commissioners that this is gender bias. This is a violation of due process, a violation of a right to judicial remedy because the entire process was stacked against her because she was female and because of the crimes she was accused of. That case has been languishing in the Inter-American system for five years now, without even an admissibility report.

Accomplishments

In light of these obstacles, what the Inter-American system has accomplished is encouraging at the very least, and astonishing. Laws have changed. In Peru, after a decision by the Inter-American Court on a massacre in Barrios Altos, amnesty laws were repealed. Public apologies were issued in Guatemala after Helen Mack, who some of you may have heard of, brought her case before the Inter-American Court. The court ordered Guatemala to publicly acknowledge state responsibility for violation and ask for forgiveness. The president of Guatemala did so in the National Palace in front of 3,000 *Guatemaltecos* and *Guatemaltecas*, who represented the range of society in Guatemala. Countries like Colombia have paid millions of dollars in reparations.

Other things have been accomplished: Alba Lucia was set free. When we brought the case before the Inter-American Commission – sometimes in this litigation you are not only looking for an end result; you are looking to pressure the government to take action on specific cases – her case was in appeal. The Supreme Court in record time in Colombia looked at her case and decided that it would have been impossible for her to strangle her baby, which was the doctor’s position, because there was a perfect ring around the baby’s neck. The baby died choked by her umbilical cord. [Alba Lucia] was set free after seven years in prison.

These accomplishments are due to a great extent to the struggle of those affected by human rights abuses and human rights defenders. Women I have had the privilege to represent, including Helen Mack, Lucrecia Mack, Alba Lucía Rodríguez



Judge Kcomt comments on the Inter-American system

Cardona, among others, have forced states and international bodies to listen to their voices and take seriously their claims. We should all recog-

Women ... have forced states and international bodies to listen to their voices and take seriously their claims. We should all recognize that when we refer to these individuals as victims, they are really the justification for these bodies to exist and the blood and the fuel behind them.

nize that when we refer to these individuals as victims, they are really the justification for these bodies to exist and the blood and the fuel behind them. Thank you very much.

Kcomt: I am very glad to hear your presentation about the other part of the world, *Sistema Interamericano*. My concern is about the access. What recommendations can you make for better or easy access for the common person to go to the international court? There are cases where you do not have to go to the national system – you can go directly to the international court. But the access is very difficult. I know many cases where the people cannot go to the international court. What recommendations can you make on this point?

Altholz: I think that is obviously a very difficult issue, with the very limited budget and the political considerations. States like Mexico, Peru and others who have historically not been very supportive of the Inter-American system have in certain

moments tried to force the commission to focus on promotional activities. With such a limited budget, if the commission or the court were to focus its energies on promotional activities, the individual complaint mechanism would suffer.

I think that it is very important to protect the court's and commission's role first as quasi-judicial or judicial bodies. I think that an important step was more reforms to the court's rules of procedure in 2000. After 2000, victims and their representatives now have independent standing to argue cases before the Inter-American Commission; they do not have locus standing to bring cases before the Inter-American Court. Only the commission and a state can refer cases to the Inter-American Court.

One recommendation would be to give victims and their representatives direct access to the Inter-American Court where their decisions are binding. That is one of the reforms, for example, that the African Court is looking at incorporating in its new rules of procedure. I think that states have to take seriously their role in promoting human rights and in human rights education. Unfortunately, that is not a priority in the agenda of many of these states.

Ezeilo: Thank you very much. It appears that the Inter-American Court is really doing very well. It appears also that the compliance with these decisions is fairly good, because from what you said, that states have paid a lot of damages, compensation to victims including even public apologies which you rarely find in all the jurisdictions, even in the African Charter in terms of enforcement.

But at the same time, you are also criticizing the compliance, that they don't have the sanctions, the ways of enforcing their decisions. I would like particularly to ask to what extent states use the municipal laws to resist the Inter-American Court, or whether they are prone to give a wide margin of appreciation to states because of the national laws. There are other particularities that I think are part of the problem why the United States and Canada have yet to ratify the Inter-American Convention on Human Rights.

I think I've found the convention on violence against women most progressive; I think to date it's the only region in the world that has adopted that. To what extent is that applicable? Is it really being implemented? Have there been any particu-

lar cases brought under that convention before the commission or the court?

Altholz: Thank you. The Convention of Belém do Pará – the Convention on the Prevention, Punishment and Eradication of Violence Against Women – is the most ratified regional instrument: 33 countries, since the last time I looked in 2002, had ratified the instrument. Yet, only one case has been brought under that convention before the Inter-American Commission. So, on the one hand it is a very ratified instrument, but on the other hand, I think it is up to us advocates, part of the women's movement, to ensure that we use that convention and use the broad language that the convention affords.

In terms of national laws, it really depends on the country, it depends on the political situation of that country and it depends on their constitution and how they have incorporated international treaties or international law into their constitution.

There are countries like Colombia where one of the only things that functions in Colombia is the constitutional court. They have relied not only on jurisprudence issued by the commission and the court against Colombia, but they have looked at jurisprudence against Peru and other countries, Inter-American jurisprudence. So, Colombia – at least their constitutional court – has taken very seriously the weight of jurisprudence of the Inter-American system. Other countries like the Dominican Republic have a very conservative view on international law and are still using arguments based on sovereign rights, although they have signed almost every major international human rights treaty ever drafted.

I don't think that certain nations, when they signed these instruments, anticipated the enforcement bodies would be as effective as they've become, especially in the Americas. I think that's why you see the resistance of states to sign new treaties. Many of these treaties were signed in the 1960s, '70s, '80s, perhaps, when these systems did not function well, so they felt safe. Now when you have an international court, like we do in the Dominican Republic saying, "You're violating human rights," – not only that you're not interpreting your constitution well – that's very threatening to them. So, in short, it depends.

Judges: Thank you.

CHAPTER IV – ACCOUNTABILITY AND JUSTICE: Statements from Judges, Findings of Law and Fact, Recommendations

Justice Richard Goldstone



Good afternoon to you all. I have one disappointment and that is that Mary Ann Arnado only conferred on me the title of honorary woman at the end of her talk. Had she done it at the beginning of the talk, I could have stood up with all the women.

I would firstly like to align myself with so many of you here today who have acknowledged the courage of the survivors who so courageously came and testified and added their voices to the proceedings before this Global Women's Court of Accountability. When I hear their stories, I realize how many millions of survivors there are around the world whose voices have not been heard.

I would like to suggest to this audience – which is mainly a female audience – that the question that we are looking at, that is violence particularly against women, is not a women's issue only; it is a human issue and it's as much a man's issue as it is a woman's issue. We are all demeaned, regard-

We are all demeaned, regardless of our gender, when this sort of violence is practiced against any member of the human race.

less of our gender, when this sort of violence is practiced against any member of the human race.

We are grateful, too, for the presentations from the experts. They were really of a tremendously high standard, each one, one after the other. It really has been a great privilege to have heard all of them and we are grateful to them.

What has shown through all of the presentations, and through also the testimonies of the survivors, has been the importance of recognizing the human dignity of every human being. It was their dignity that was demeaned; it was their dignity which they demonstrated to us in the reaction which they had and in the testimony that they gave. It's the recognition of the equal worth of every person, from and within every nation, that is fundamentally important and until that is recognized universally, we are not going to be in a position to deter some of the terrible things that are happening every single day of every single year.

Dignity. The attacks on dignity are really illustrated by a paradigm of dehumanization of victims. I would suggest that if one looks around the genocides, the crimes against humanity that have been perpetrated for centuries, fundamentally they have required a dehumanization of the victim. You cannot treat people like that if you think that they are your equal, and evil leaders adopt policies of dehumanization – whether it was referring to “vermin” by Nazis, whether it was referring to the Tutsi as “cockroaches” in Rwanda, whether it was the disparaging of Muslims in the former Yugoslavia, and I would suggest and refer to Abu Ghraib. I don't believe that those photographs would have emerged showing that sort of conduct against people whom those soldiers treated or thought were their equal. These were Muslims, and therefore they were lesser human beings.

This is not less true of gender violence. The men who commit these despicable crimes generally tend to regard women as property, as chattel, as objects over which they can exercise their power

and their domination. The role of education in all this is fundamentally important, and my colleague from Peru, Judge Kcomt, is going to give some attention to that in her remarks.

I agree that too little is being done by the United Nations and I would adopt the recommendation that was suggested by Marijana Senjak from Bosnia that there should be an agency at the United Nations that is solely devoted to the question of

... I would adopt the recommendation that was suggested by Marijana Senjak from Bosnia that there should be an agency at the United Nations that is solely devoted to the question of violence against women around the world.

violence against women around the world. UNICEF is the appropriate body to deal with violence against children, and that's a terrible problem around the world. But there's nobody looking specifically at violence against women.

It's not only violence in war, but unfortunately too, it's violence in your country and my country and every country where women are every day the subjects of terrible domestic violence. These issues should be given more attention by the United Nations and the international community, generally. I can't for the life of me see why the refugee crisis, as bad as it is, is any more deserving of special attention than violence against women around the world. And I'm not suggesting that the one is more or less important than the other, but they both clearly cry out for adequate attention.

Professor Aceves in his excellent presentation this morning referred with some optimism to the role of civil society, and I fully share his optimism. We have heard specifically today about the tremendous advances, the tremendous progress in the area of gender crime in particular, but also international criminal justice. Do not forget that a little more than 60 years ago there was no such thing at all; there was no such subject as international criminal justice. This is something born of the sec-

ond half of the 20th century.

And if one takes a step back, as we all should, there is room for optimism, and there has been tremendous progress in this area, and particularly in the area of the recognition of systematic mass violence and other gender crimes as war crimes and as international crimes. This was a completely neglected subject, as I mentioned in the opening yesterday morning.

So it should be a spur to all of us to continue to do what we are doing, and I think all of us in this room are involved in a greater or lesser way in that sort of activism, and it does make a difference. If we don't do it, it's not going to be done. Governments aren't going to do it because these issues are not very high up on their agenda.

In the area of the ICC, it's tremendously exciting that the 60 ratifications optimists thought would take 10 years took less than four years. Nobody would have anticipated that. I would not, as an African, have anticipated that Africa would lead all the regions in the number of ratifications. Twenty-seven have ratified, 27 out of the 100, followed by Western Europe with 25 – a very exciting development.

I certainly wouldn't have imagined that the first four cases to come before the International Criminal Court would come from the African continent. And that's something that I think is encouraging, and I certainly think that the international community and countries and all of us must find ways to encourage the roughly 91 countries that haven't ratified to do that, notwithstanding the pressure the other way from the Bush administration discouraging countries from ratifying. It's tremendously important, I think, that the 100th ratification came from Mexico. I can imagine the pressure put on the Mexican government from Washington not to ratify. And it's significant that both the United States' northern border and southern border are occupied by countries – Canada and Mexico – that have ratified the Rome treaty setting up the International Criminal Court.

Finally, I think that we should recommend that more space be created for voices of survivors. The Joan B. Kroc Institute for Peace & Justice is to be congratulated, and particularly Dr. Dee Aker, who has put so much into organizing this Global Court that we've all been so impressed with yesterday

and today. I don't think many of us really appreciate the tremendous logistics and the time and the effort and the money that has gone into bringing people from many parts of the world to be with us today. So heartfelt gratitude, and I think I speak on behalf of all my fellow judges and myself in thanking the IPJ very much for doing this and setting what I hope will be an example, because it's organizing this sort of event that I think does hone our sensitivity for this issue and makes even greater activists of all of us.

Honorable Fatou Bensouda



Good afternoon. I want to align myself with previous speakers about the honor and privilege that I have of being here and being invited to this occasion. I really think it has been very important for all of us to sit for these past two days and listen to the powerful testimonies that have been given and also to listen to the eminent legal experts in their presentations. Thank you very much.

I wish to emphasize my agreement to some of the things that have already been said by legal experts such as Estelle, who dwelled on the ICC and what it has done. And it is perhaps crucial that maybe I just highlight my intervention.

I highlight the regime of the International Criminal Court, a regime whose intention is to remedy the shortcomings of previous international instruments and institutions. Several provisions indirectly guarantee due investigation and prosecutions of gender crimes. One of the most important guarantees relates to gender balance and expertise. The Rome Statute requires that fair representation of female and male judges be taken into account in the selection process, as well as fair representa-

tion of females and males in the selection of staff in all other organs of the court. I'm referring here to Article 36.8.a.

It also mandates that the selection of judges and other staff take into account the need to include persons with legal expertise on violence against women or children (Article 36.8.b). The prosecutor is explicitly required to appoint advisors with legal expertise on such issues; this is Article 42.9. Part IV of the statute foresees the creation of a Victims and Witnesses Unit within the Registry to provide protective measures and security arrangements, counseling and other appropriate assistance for witnesses and victims.

The unit, which has already been set up, includes staff with expertise in trauma, including trauma related to crimes of sexual violence. Both the pros-

Both the prosecutor and the registrar are under a mandated obligation to employ staff with expertise on violence against women and children.

ecutor and the registrar are under a mandated obligation to employ staff with expertise on violence against women and children. The significance of these provisions is that it makes the Rome Statute the first international treaty in which the above mentioned principles of female representation and gender expertise have been explicitly incorporated.

The ICTY and the ICTR have shown the importance of having female investigators, researchers, judges, legal advisors and prosecutors in furthering the investigation and prosecution of gender crimes. For example, the fact that Judge Navanethem Pillay, a female judge from South Africa, was the only woman judge on the ICTR bench, and the fact that she questioned witnesses in the Akayesu case, is working testimony of gross sexual violence resulting in additional charges being added to indictment.

Judge Pillay observed in this respect that “who interprets the law is at least as important as who makes the law, if not more so.” She further said, “I cannot stress how critical I consider it to be that women are represented and a gender perspec-

tive integrated in all levels of the investigation, the prosecution, the defense, the witness protection and the judiciary.”

In the ICC now, presently, seven of the 18 judges are women, most with expertise in gender crimes. In the Office of the Prosecutor, one of the deputy prosecutors – my humble self – is a female. Amongst the budgeted positions today, 54 percent are female, 46 percent male, and 34 percent of the professionals are female.

In order to ensure expertise when dealing with gender crimes during investigation and prosecution, the Office of the Prosecutor has established a gender and child unit. Briefly, the unit develops and ensures compliance with so-called standards of service, aiming at minimizing the risk of worsening the victim's condition during the investigation. This encompasses the way of conducting interviews, providing correct information to victims, laying as little burden as possible on them.

We contact the victims periodically, treat them with respect, acknowledge their suffering and [gauge] their readiness to testify about it. It also helps victims by informing them and channeling their requests to the registry so that they can participate in the proceedings and get reparations or further assistance, and it assists the investigation teams by assessing the state of the witnesses, assisting in the interview of the highly vulnerable victims, training and coaching the investigators in applying the standards of service. For this the Office of the Prosecutor has formulated protocol standards to be applied by investigators in interviewing witnesses and victims of sexual abuse.

We have also conducted in-house training as well as training from outside groups with expertise on gender, gender violence and other related issues. This is to help investigators and other Office of the Prosecutor staff in dealing with victims of such abuse and traumas related to their investigative activities.

We must continue to call on our governments who have yet to ratify and sign the Rome Statute; it is a duty that we have. Up to now, NGOs and lobby groups have significantly influenced the recognition and sanctioning of gender crimes. As mentioned above, they have been an indefatigable model behind the final product of the Rome Statute.

Today, cooperation with NGOs is still crucial in many different areas, for instance, providing information and training. The prosecutor can refer cases to the ICC *proprio motu*, acting on NGO information. This is especially important for victims of gender crimes since it allows for women NGOs

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to provide the prosecutor with information that might not be forthcoming if left to women victims of gender crimes because of the shame that is attached to these crimes. The identification of victims of gender crimes by NGOs would significantly further the work of the Office of the Prosecutor.

Another area where NGOs are very important is the area of training of the court staff members. In order to carry out effective investigations and prosecutions, the Office of the Prosecutor needs to be informed as much as possible on the often very individualistic context of sexual crimes, for example, habits and attitudes or reactions of society toward sexual violence in a specific region. NGOs working in a specific region or even area are vital to inform and train our staff.

Informing victims: Given the limited resources, the court will not be able to address every single case of sexual violence. It is of utmost importance, therefore, that victims of sexual violence are informed on the limitations of ICC investigations and prosecutions – by that I mean creating realistic expectations of the ICC, but also on the possibilities offered by other regional and national fora.

Finally, it is beyond doubt that victims of sexual violence need very personal support by persons they can trust. This will be particularly important when, through testimony, victims relive their past experiences. NGOs can help the office in identification of their needs. I thank you for your attention.

Judge Carmen Kcomt

Good afternoon. I would like to start off by thanking the organizers of this event for taking the initiative for making this possible. I would like to thank Dr. Aker and my dear friend Laura Taylor for inviting me. And to everyone sharing this panel with me, I admire your work and I feel honored to be here with you.

It has been over 20 years since I became involved with human rights matters, especially children's rights, women's rights and the rights of those without their freedom. Now, after all of these years, there are times when I think that things have gotten better – but there are also many times in which I think about how much we haven't changed or improved, and how things as a matter of fact have gotten worse.

I have heard the testimonies of the women from different parts of the world. I have suffered with them listening to their stories. I want to tell them thanks for being here and for sharing with us that painful part of their lives. I learned very much from them.

Until recently, I lived all my life in a beautiful country in South America called Peru. Peru continues striving to build and advance in spite of their major problems and terrible leaders. Allow me to share with you how bad the social situation is in Peru. For example, last year, only on the coast, there were approximately 600 lynchings. Nationally, there were more than 1,800 lynchings. These numbers reveal the chaos that we live in in Peru because of the absence of governmental protection and because of the corruption and impunity.

Peru is a multiethnic country of which 9 million of its population do not speak Spanish, but other Indian dialects, such as Quechua or Aymara. Because of this, the system discriminates [against] them, as these people do not have access to the formal judicial courts. Since these courtrooms do not provide bilingual services, these people are excluded.

Eighteen years ago, in a city called Piura located in the northern part of Peru, myself along with other women of my organization had the privilege of founding the first police station that gave specialized treatment and legal help for women victims of domestic violence.

Recently graduated from college – very young – I quickly learned how difficult it is to fight against cultural standards and social patterns, stereotypes and *machista* behavior. I remember as well how difficult it was to make the male policemen understand that the abuse is not only physical, but also psychological. The male policemen ridiculed and made fun of the women. They justified the cries of the women with expressions like, “Well, maybe he spanked you because you didn't clean well,” or “You didn't cook well enough,” or “You didn't serve his food as soon as he got home,” etc. That was 18 years ago. Until just two years ago when I left Peru, things were still the same.

When I came here to this country, I worked as a volunteer [at] the Domestic Violence Clinic in El Cajon. Working there helped me prove that domestic violence in the U.S. or in Peru are the same. It has nothing to do with one's nationality or economic situation; it has nothing to do with race. White, black or yellow, domestic violence is the same everywhere. As the World Health Organiza-

... domestic violence is the same everywhere. As the World Health Organization states, domestic violence is an epidemic, a problem of public health and the crime most committed against women in the world.

tion states, domestic violence is an epidemic, a problem of public health and the crime most committed against women in the world.

During the years I worked as a family and juvenile judge in Peru, I convicted many aggressors of domestic violence and I ordered many restraining orders to protect the victims. But a few months later, most of the aggressors and most of the victims kept coming back to my courtroom. Why? Because judicial sentences did not solve social problems. I believe that the best way to improve the domestic violence situation is through education.

Another of the problems affecting women in Peru in rural areas is one that comes from the times of the Incas. The name is *raption*, meaning “matrimonial kidnapping.” This tradition allows a male

farmer to kidnap a young girl and after several days return the girl to her family and express his decision to marry her. The family always agrees. But if the kidnapper did not like the girl and decides not to marry, she would suffer a life of shame for her and her entire family. If the male wants to marry, the girl's family goes to the family judge to ask for authorization.

Every time I denied this kind of authorization, I had to confront not only the family, but the whole community, because they believe parents are the owners of their children and they have the right to decide everything entitled to them without considering their feelings or human rights.

Until just three years ago, there was a law in Peru which said if the rapist marries the victim, he is free from going to jail. Thank God that because of the efforts of countless human rights defenders, this law was revoked.

There is another problem. At the start of school, most poor families decide to send to school only the male children. The female children stay home and learn domestic duties. This is why the statistics show that the females are the most illiterate in Peru. At the time of harvest, both boys and girls must stop attending school and work at the field. This situation violates the Convention on the Rights of the Child.

These are a few examples of many cases of violations of women's rights in my country, a country in which, according to the Commission of Truth and Reconciliation, there are more than 9,000 missing people and where lynchings are almost an everyday event.

Now, according to the Beijing Platform [for Action],²⁰ the governments agree to several specific steps [with which they will] comply in order to stop violence against women. One of the agreements discussed is to write laws that protect women and to implement these laws to make them effective. Almost every country complied with the creation of the laws, however, only a few of them followed up with implementation, which consequently made these recommendations merely rhetorical in nature.

For example, in Peru in 1994, we got the first law to protect women victims of domestic violence. After that, the law was changed so many times, but

in the city in which I lived and worked, we never got even one shelter.

Another of the recommendations from the Beijing Platform was that governments must assign all adequate resources in order to ensure that the law follows its objectives. This is something that may be too difficult for many governments because of the lack of interest from the politicians. If the interest was present, there would be channels and creative ways of reassigning the existing resources and other related strategies to generate such resources; for example, evaluating budgets with the purpose of making sure that they are sensitive to gender.

Currently, we have more than 10 legal international instruments of the United Nations that protect women's rights, created with the purpose of meeting the specific goals. However, many of these instruments have weak procedures or procedures without clear specifications.

Conventions, declarations are important, but I don't believe we should put all of our expectations and hopes of a world fair for women merely into the international instruments or legal systems.

Although I am a lawyer and a former judge, I believe more in education as a strategy. I believe that only by educating with justice and democracy can we break cultural barriers.

Although I am a lawyer and a former judge, I believe more in education as a strategy. I believe that only by educating with justice and democracy can we break cultural barriers. In the education field, I recommend the promotion of feminism as a leading liberal movement, just as any other human rights movement, such as the ones fighting racism, homophobia or sexism; a movement of feminists well understood and balanced that brings together men and women instead of causing confrontation or separation; a movement for changing the socio-cultural structures of domination.

Finally, I will say, as a judge, I have had to make many important professional decisions, some of which have led me to be here in the United States.

20. The Beijing Platform for Action was adopted by the Fourth World Conference on Women in 1995.

When I left Peru, I thought also that I left my dreams there. But recently, I have come to realize that I was wrong because I still believe in peace and my dreams are still the same. And one of my biggest dreams is the day on which women realize they have rights, realize they have control of their own bodies, make their own decisions, make a commitment to plan their futures, stop being passive and instead become more assertive and active to start feeling more equal, independent and free. This is my aspiration and why I keep fighting.

Thank you.

Honorable Marguerite Waller

I feel as if I don't really have to say anything; it's all been said so wonderfully. But I would like to add my thanks to the Joan Kroc Institute and to everybody here who has been working so hard for so long to bring us all together for this extraordinary opportunity to engage in dialogue.

His Honor, Justice Goldstone, opened these proceedings by urging that the law needs to be changed, that the laws governing conflict and other forms of violence were drafted by men, for men. Over the course of two days we have heard eloquent testimony by women who have had the generosity to tell again their stories of pain and violation – because these are stories that have been told before; it's not a question of breaking the silence, it's the fact that there are so many levels of silence and it's so tricky to find the right ears and take it from there. And other women and men who have thought and felt deeply about these stories have offered their analyses and their histories.

We have heard, in other words, for the past two days, many instantiations of what Justice Goldstone told us in the first place: that the law needs to be changed, that laws were not made for the people who seem to be suffering – they're not the only people who are suffering, but the people who seem to be suffering a disproportionate amount of the violence in today's very violent world.

So, my first recommendation is that we adopt all the recommendations presented to us. I carefully wrote them all down and realized that I couldn't possibly reiterate them in a few moments today, so I just want to urge that we adopt all of them.

Also, that we commit ourselves – everybody here in this room and we the judges – to disseminating this knowledge to others and to engaging with these stories very deeply ourselves. We're kind of sitting over there in a slightly separate space, but that separation is just temporary; it's just to help us. We, I believe, must engage these stories ourselves on a very deep and spiritual level.

This process that we have been privileged to participate in over these two days confers upon us a

This process that we have been privileged to participate in over these two days confers upon us a great responsibility ...

great responsibility, which includes developing this feminist understanding that Carmen was just talking about, of the patterns that emerge from these testimonies.

For example, when one looks for the perpetrators of the murders, rapes and disappearances in Guatemala, what does one find? One finds a collaboration, one finds a collusion among lots of different entities and institutions, as well as individuals, among the U.S. government, the Guatemalan government and the big agribusiness corporations – United Fruit, Starbucks. We find a certain political economy that pulls in a lot of people on a lot of levels. I hope that some country or some countries will have the courage to prosecute these crimes, perhaps a consortium of countries.

When one looks for whom to hold accountable for the gendered and sexualized violence against women in the Niger Delta region, again we find a very powerful collusion, a collaboration among the Nigerian government, the oil companies – Chevron, Shell, Exxon and so on – and those powerful state protectors, some of them in the U.S., some of them in Holland and so it goes. These same oil companies have violated the largest delta region in Africa, now designated the most endangered delta region in the world by the United Nations. They have violated this environment, this ecology, as well as the women who depended on it, who depended on these rivers and mangrove forests for their food, for their fuel, for their housing. Which countries will have the courage to prosecute these

Which countries will have the courage to prosecute these crimes against both human dignity and the environment, which of course are intimately inter-linked?

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We've heard about the lack of accountability for human rights abuses in Iraq and in Afghanistan. Who is going to gather the information? How do you gather the information about those abuses if a very powerful entity is behind the commission of those abuses? Knowledge production becomes a problem, a challenge. It was argued that a new form of war rape in post-conflict areas has been occurring, where local mafias, U.N. peacekeepers and human rights workers collude in the forced prostitution of women and the creation of brothels in trafficking. This is a development that if we look at more closely can tell us something very important about the nature of the violence for which we are seeking not only justice, not only accountability, not only remedy, but also an end. We're seeking an end to this kind of violence.

Why is it that we hear similar stories from so many different regions in the world? Why is it that the long-term effects of such violence, so well known to its victims, is only recently entering the consciousness of state and international law? Why does the Japanese government not leap at the opportunity to apologize and pay reparations to the women pressed into military sex slavery during World War II, as a way to enhance its prestige and legitimacy both domestically and internationally?

The debate yesterday over whether brothels operated by peacekeepers constitute a form of war rape led to the clarification that war rape is seen as concerning the nation and national identity, whereas brothels operated by peacekeepers are not. This distinction, it should be pointed out, reproduces the use of women by the nation-state to symbolize its territory, its identity. This use of women as a symbol, it has been argued by feminist theorists, directly contradicts the recognition of women as citizen agents.

Now, it's not, as one of you pointed out to me, this regime or that regime; it's all kinds of regimes. Rape, as Huma Ahmed-Ghosh argued yesterday, is a form of gendered violence legitimated by a whole range of institutions. It's related to power. It is, as we say in women's studies, never about sex, always about domination. And the nation-state is the preeminent institution that is patriarchally structured. It also happens – at the moment, [I] don't know how long this will be the case – that the U.S. happens to be the most powerful nation-state.

So, what are some of the implications of this? Lilia Velasquez said what needed to be said about the importance of holding U.S. leaders accountable, although I think she left a few of our past leaders off the hook a bit. We do have in our history the internment of Japanese-American citizens during World War II in California. There was also the decimation of the population of Mindanao during the Philippine-American war. And of course one could go on and on.

She also said something I thought very provocative about holding the U.S. population accountable. And I'd like to close by going into some of the minutiae of what that might mean. We need to see women here; women here in the U.S. are invisible as well. Women in the U.S. military get raped in unbelievable numbers. The domestic violence that Carmen was talking about as a global epidemic is also an epidemic within the U.S. It is the leading cause of injury to women, period. And of course the law enforcement agencies are famous for standing back and not intervening.

By and large, if my students are any indication, women in the United States know absolutely nothing about Status of Forces Agreements or Visiting Forces Agreements. Even if you teach it to them, they will not remember it the next day, nor will your teaching assistants. It's so far out of whatever sort of framework that we have that it's very difficult to get people to tune in when you're trying to explain it.

And, of course, Lilia went into the problem of abusive judges. We also have abusive embassy personnel around the world who give people a very hard time about getting visas just to come here to study or to teach. And of course, one could go on.

If the states are going to take a role in promoting human rights, then the state itself must be re-

imagined. Somehow the state itself cannot be a patriarchally structured institution and be expected to implement these instruments and to hold perpetrators accountable. So, the state, I would submit, itself needs to be re-imagined, constructed differently – something I know that the Zapatista group, among others, is working on.

Even our metaphors need to subtly change. It's certainly important to let voices be heard and to

Even our metaphors need to subtly change. It's certainly important to let voices be heard and to listen to voices, but it would be nice if we weren't always speaking up and hoping that somebody else would hear us. It would be nice if we were the voices and the ears both.

listen to voices, but it would be nice if we weren't always speaking up and hoping that somebody else would hear us. It would be nice if we were the voices and the ears both.

I certainly want to emphasize courts of women are a good start because "court of woman" is itself an oxymoron in the context of the nation-state. If a group of such states should be able to come into existence, these will be the states that will be courageous enough to implement human rights and to enforce accountability. Thank you.

Honorable Joy Ngozi Ezeilo



I would like to align myself with Justice Richard Goldstone's opening statement recognizing the efforts of the organizers as well as all the participants, particularly the legal experts. We have a huge resource in this room, the amount of information that we [have] here. We, as judges, have been educated by all of you. And I want to thank those brave women that have come from all over the world to this Global Court of Accountability. We have heard your case and we believe that justice will be done. In my conclusions and recommendations as a judge in this Global Women's Court, I will focus a lot on state responsibilities and responsibilities of other actors.

State responsibilities for gender crimes – violations of human rights of women – must be reiterated, reaffirmed and reinforced. Gender crimes, crimes against humanity, we all know, disproportionately affect women and girls. They are the ones that are persecuted; they are the ones that are raped, sexually assaulted, [undergo] forced sexual slavery, forced pregnancy, forced abortion, forced marriage – all are perpetrated against women and girls, including trafficking and trafficking for sex. We know that violence is defined as any act that causes or may cause any person physical, sexual, psychological, verbal, emotional or economic harm. And we have seen a lot of cases of violence against women from the hearings.

We also know that Article 1 of CEDAW defines discrimination to include any distinction, exclusion or restriction made on the basis of sex which has the purpose of impairing or nullifying the enjoyment of human rights of women.

We have noted all the relevant international instruments, including the International Covenant on Civil and Political Rights, the International Convention against Torture, the Rome treaty, the Convention on the Rights of the Child, the Convention on Refugees, the Convention on the Elimination of All Forms of Discrimination against Women, amongst others, including also the Convention and Protocol against Organized Crime that also prohibits trafficking against women and children.

It is clearly the obligation of states to ensure effective remedies nationally and to implement and ratify treaties domestically. Their municipal laws should not be in any way an excuse for restricting or violating rights of women and girls, recognized in numerous international standards.

In law, we say “*ubi jus ibi remedium*” – once there is a right, there must be a remedy – and we must provide an effective remedy. And of course, if someone has a right, there must be a duty on somebody, and the duty is on the state to fulfill and enforce those recognized rights. The fact that violations were committed even by private citizens, corporations or nongovernmental actors should not exonerate government and institutions from liability both at a national and international level.

The fact that violations were committed even by private citizens, corporations or nongovernmental actors should not exonerate government and institutions from liability both at a national and international level.

Individuals, communities, groups and corporations may be held accountable – from the cases we have heard from all over the world, there are violations that were also suffered because of nongovernmental actors. However, the ultimate accountability is on the state as a sovereign that has enormous power, that has entered into multilateral treaties. The ultimate accountability is on them.

International laws, we have seen at times, are weak to hold states accountable the way we all want to and to ensure compliance and effective remedy for wrongdoing. And at times it makes me wonder whether international laws are helpful or whether they are an adequate vehicle, particularly for the promotion of human rights of women. But we must not lose faith in international standards because collectively, using that mechanism, we can achieve a lot.

And that brings me to the crucial role of civil society organizations in holding governments to account. It is the duty of civil society to expose violation brought by state and non-state actors using multimedia approaches, innovative advocacy strategies, as well as documentation of abuses, gender crimes and violence against women, as we have seen and heard in this court. There is no shortcut to agitation and lobbying for change.

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It is the commitment and enthusiasm of civil society, importantly the women's movement, that has led to positive changes that we have in terms of gender equality and women's empowerment. Scholars and activists must unite towards social transformation, equity, fairness and gender justice. In today's world and civilization, everyone – individual, community, transnational corporations – should be accountable for crimes, commissions, acts or failures to act that have caused injustice and injury to others.

I, therefore, find governments in all cases presented to have acted in breach of their international

I, therefore, find governments in all cases presented to have acted in breach of their international obligations to protect and promote women's rights.

obligations to protect and promote women's rights. Whether in time of war, conflict or peace, states have failed individually and collectively, including the United Nations, which is the site of those discussions and where those instruments emanated. They have all failed, to a certain degree, in their responsibilities. They have failed to ensure obligation – and I mean the effective obligation of the principles of equality, non-discrimination and of course gender justice, which I believe have attained the status of jurisprudence. Just like prohibition against torture and other gender crimes prohibited by the Rome Statute, states that have not ratified these instruments, including the U.S., are bound nevertheless by its provisions. And this court so holds because they are part of customary international law in which no derivation is permit-

ted. Private citizens are also responsible, and they are bound by this obligation.

I, therefore, recommend as follows: that in all cases involving the government that they should apologize, admitting failure for breaches of rights of all the victims that have testified here. They should also provide appropriate damages and compensations for harm suffered by those victims. There should be a transparent implementation of obligations of state parties to relevant international laws and treaty-monitoring bodies.

Educational awareness, including gender-sensitive training of judiciary, law enforcement officers and all stakeholders, including lawyers, is very important. We must embark on that and it is the duty of the state to ensure that that happens, including any type of agencies, like U.N. agencies.

Law reforms, particularly at a domestic level, to ensure incorporation – I want to call it domestication – of those international laws for systems that require that in their constitution are important. We need to also ensure application at a national level; that national judges implement these international treaties. So we need to create an enabling environment, and the obligation is on the parliament to do so.

Involvement of women in decision making, peace negotiations and peacebuilding initiatives, including post-conflict reconstruction, is imperative, and U.N. Resolution 1325 must be implemented by all governments. [We must] publicize versions, particularly friendly versions, of international standards to ensure that administrators, policymakers, lawmakers, including grassroots men and women, understand the purpose and the content of those international laws.

We have also to ensure free legal aid. Legal aid, as we have seen in the presentations, is a prerequisite to claiming or responding to violations of human rights.

Rehabilitation and reintegrative measures for victims of violence, including provision of shelter (where necessary), psychosocial supports, even those provided by nongovernmental organizations, should be supported by the government. We need to economically empower women, victims of violence and victims of various gender crimes committed in conflict situations.

Gender balance and appointment, particularly ensuring women's participation in all spheres of life, is also important in terms of illumination and developing policies and programs that will be gender responsive. Rule of law is key in any democracy, and we need to ensure observance of the rule of law, for everyone is called before the law – no one is above the law – and we ensure gender equity in application of the law. Donor agencies and the United Nations should give special attention to civil society groups, NGOs, and ensure that they fund innovative programs that will promote respect for human rights.

I am convinced that the government has the obligation to develop the criminal, civil level and administrative sanctions in domestic legislation to punish and redress the wrongs to persons subjected to violence. We must condemn impunity, gender crimes and violence with the same force that the international community did the Nazis and the atrocities committed during the Second World War that led to what we have today as the modern human rights movement. Sixty years after, we are still grappling with the implementation of some of these basic human rights.

We must ensure a system where we don't recreate the pre-Second World War situation or the situation that gave rise to the United Nations. They must be committed to the purpose of the formation of that United Nations. As noted in the Vienna Conference held in 1993, human rights are women's rights, and human rights of women and girls are part of universal human rights, and we must respect and fulfill that obligation as nongovernmental actors.

To the victims, I think today the court will have drawn justice to your case, and I hope that from now on the doors of justice will open up to all of us nationally and internationally so that we may all together find a durable peace.

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IN THE GLOBAL WOMEN'S COURT OF ACCOUNTABILITY

IN RE)	CASE NO.: 2005-01
WOMEN'S HUMAN RIGHTS ABUSE)	
LITIGATION)	FINDINGS OF LAW AND FACT
)	
)	RECOMMENDATIONS
)	
)	
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On Nov. 17 to 18, 2005, the Global Women's Court of Accountability convened at the Joan B. Kroc Institute for Peace & Justice at the University of San Diego. The court was established to consider the status of women around the world and the human rights abuses committed against women throughout history. The court consisted of five distinguished panelists: Justice Richard Goldstone, the Honorable Fatou Bensouda, the Honorable Joy Ngozi Ezeilo, Judge Carmen Kcomt and the Honorable Marguerite Waller.

Through its deliberations, the court examined women's experiences in conflict and post-conflict situations. The court heard testimony from women survivors, witnesses and peacemakers from throughout the world, including Afghanistan, Bosnia, Iraq, Nigeria, the Philippines, Sri Lanka, Tunisia, Uganda and the United States. It considered abuses committed by private and public actors, including military personnel and police officials. And it considered numerous atrocities, including torture, summary execution, forced disappearance, sexual violence and human trafficking. The court was also presented with analyses of applicable international law by a group of legal scholars and practitioners.

Based on the testimony presented and legal arguments proffered, the court issues the following findings of law and fact:

1. That for generations, women have suffered physical and psychological abuse throughout the world.
2. That such abuse has occurred in conflict and post-conflict settings.
3. That the perpetrators of these acts have included private and public actors, including military personnel and police officials.
4. That the abuse suffered by women has included the following acts:
 - A. murder;
 - B. extermination, including but not limited to the intentional infliction of conditions of life calculated to bring about the destruction of part of a population;
 - C. enslavement, including but not limited to the exercise of any or all of the powers attaching to the right of ownership over a person;
 - D. deportation or forcible transfer of population;
 - E. imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
 - F. torture and other cruel, inhuman or degrading treatment or punishment;
 - G. sexual violence, including but not limited to rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity;
 - H. enforced disappearance, including but not limited to the arrest, detention or abduction of persons;

- I. discrimination against women, including but not limited to any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field;
 - J. other forms of discrimination and persecution, including but not limited to systematic oppression and domination by one national, ethnic, racial or religious group over any other group or groups;
 - K. other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.
5. That many of these acts have gone unpunished, either because states have been unwilling or unable to prosecute the perpetrators.
 6. That these acts constitute violations of numerous international agreements as well as customary international law, including:
 - A. Convention on the Prevention and Punishment of the Crime of Genocide;
 - B. International Convention on the Elimination of All Forms of Racial Discrimination;
 - C. International Covenant on Economic, Social and Cultural Rights;
 - D. International Covenant on Civil and Political Rights;
 - E. Convention on the Elimination of All Forms of Discrimination against Women;
 - F. Optional Protocol to the Convention on the Elimination of Discrimination against Women;
 - G. Declaration on the Protection of Women and Children in Emergency and Armed Conflict;
 - H. Declaration on the Elimination of Violence against Women;
 - I. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
 - J. Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
 - K. Convention on the Rights of the Child;
 - L. Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography;
 - M. Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict;
 - N. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
 - O. Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime;
 - P. Geneva Convention relative to the Protection of Civilian Persons in Time of War.

Based on these findings of fact and law, the court issues the following recommendations:

1. The right of women to participate at all levels of public discourse – local, national and international – should be recognized. To this end, the principles of U.N. Security Council Resolution 1325 should be implemented with all deliberate speed.
2. Countries should develop and implement policies to address the inequities and injustices faced by women. Particular attention should be devoted to the status of women in conflict and post-conflict situations.
3. Victims of human rights abuses should be provided the opportunity to speak, to share their pain and to offer their experiences to the world.
4. Perpetrators of human rights abuses, including public and private actors, should be held accountable for their acts.
5. Civil society should continue to expose human rights abuses committed by public and private actors.

6. Victims of human rights abuses should be compensated for their injuries, and such compensation should include all forms of redress, including rehabilitation.
7. Countries should be encouraged to ratify the Rome Statute of the International Criminal Court and all other human rights instruments.
8. Countries should implement their international obligations and should do so in a transparent manner.
9. Countries should promote educational programs and greater awareness about human rights and human rights abuses.

Issued this 18th day of November 2005 in San Diego, California.

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Stelet Kim served as co-author for the final conference report, "Crafting Human Security in an Insecure World," and as a peace writer in the Women PeaceMakers Program at the Joan B. Kroc Institute for Peace & Justice, documenting the story of Latifah Anum Siregar of Indonesia. After receiving her M.A. in International Comparative Education from Stanford University, Kim has been working as an independent consultant to various organizations, including The Asia Foundation, Room to Read, Survivors International and SAGE:

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ACRONYMS

CAST	Coalition to Abolish Slavery and Trafficking
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEJIL	Center for Justice and International Law
DC-Cam	Documentation Center of Cambodia
ECOWAS	Economic Community of West African States
ER	Emergency Regulation
ICC	International Criminal Court
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IDP	Internally Displaced Person
INTERIGHTS	International Centre for the Legal Protection of Human Rights
IPJ	Joan B. Kroc Institute for Peace & Justice
IPK	Indian Peacekeeping Force
KFOR	Kosovo Force
LRA	Lord's Resistance Army
LTTE	Liberation Tigers of Tamil Eelam
MDG	Millennium Development Goals
MILF	Moro Islamic Liberation Front
MNLF	Moro National Liberation Front
NATO	North Atlantic Treaty Organization
NGO	Nongovernmental Organization
OAS	Organization of American States
PTA	Prevention of Terrorism Act
SWAY	Survey of War Affected Youth
TVPA	Trafficking Victims Protection Act
UN	United Nations
UNA	United Nations Association
UNHCR	United Nations High Commissioner for Refugees
UNIFEM	United Nations Development Fund for Women
US	United States
USA PATRIOT Act	Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism
VISIT Program	Visitor and Immigration Status Indicator Technology Program
WACOL	Women's Aid Collective
WCRO	War Crimes Research Office

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EXPRESSIONS OF SOLIDARITY AND SUPPORT

American Association of University Women – Rancho Bernardo Branch, U.S.
Asian Women’s Human Rights Council, Philippines
Association pour la Promotion des Droits de la Femme au Burundi, Burundi
Boston Consortium on Gender, Security and Human Rights, U.S.
Center for Global Legal Studies, Thomas Jefferson School of Law, U.S.
Center for Refugee and Gender Studies, University of California, Hastings College of Law, U.S.
Coalition Against Slavery and Trafficking, U.S.
Dev Samaj College of Education, India
El Taller International, Tunisia
Foundation for Women, U.S.
Gail Dimitroff, U.S.
Guatemala Human Rights Commission/USA, U.S.
International Legal Studies Program, California Western School of Law, U.S.
International Museum of Human Rights, U.S.
International Rescue Committee, U.S.
License to Freedom, U.S.
Maha Muna, U.S.
Mannar Women’s Development Federation, Sri Lanka
Medica Mondiale, Germany
National Lawyers Guild, San Diego Chapter, U.S.
Refugees International, U.S.
San Diego Baha’i Community, U.S.
South Asia Partnership-Nepal, Nepal
Soroptimist International of the Americas, U.S.
South Asia Indigenous Women Forum, Nepal
Survivors of Torture International, U.S.
Torture Abolition and Survivors Support Coalition, U.S.
University of Minnesota Law School, Human Rights Center, U.S.
Urgent Action Fund-Africa, Kenya
Variety Children’s Lifeline, U.S.
Voices of Women, U.S.
Women’s Aid Collective, Nigeria
Women’s Center, University of San Diego, U.S.
Women’s Equity Council, United Nations Association-San Diego, U.S.
Women’s History and Educational Center, U.S.
Women in International Security, U.S.
Women’s Intercultural Network, U.S.

*a whisper becomes a shout
when one person is brave enough to listen*



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