

NEW WORLD COURT TO JUDGE GENDER-BASED WAR CRIMES

By Cynthia L. Cooper - WEnews correspondent

Near the border town of Zur in Kosovo, a 30-year-old mother fleeing the violence of anti-Albanian ethnic cleansing with her mother and children in June 1999 was ordered by a Serbian paramilitary officer to get off the tractor on which the family was traveling.

"His pants were already open . . . He tore off my bra. I started screaming and crying," the woman told an investigator from Human Rights Watch. Seeing that she was menstruating, "he turned me around, trying me on the other side. I contracted myself very tightly and he didn't succeed. He may have ejaculated. I don't know."

Women across the globe facing similar violent offenses in the future will have a place to seek justice: the International Criminal Court. At a United Nations ceremony on April 11, the court became a certainty. It will be the first fixed international institution for securing justice on genocide, war crimes and crimes against humanity, including sexual and gender-based violence, such as state-sanctioned beatings of women who fail to dress in a certain way.

Its jurisdiction applies to cases arising after July 1.

For women, the court represents a major breakthrough in the recognition of sexual crimes as severe human rights abuses.

"This is a milestone for women because women and children are victims of war," said Vahida Nainar, a board member of the Women's Caucus for Gender Justice, a global coalition that provides gender perspectives to international justice planning.

"Women are subject to all kinds of crimes," Nainar said. "They can see the perpetrator walk down the street after committing a heinous crime. This will add to the feeling of justice being done. Women will have a place to go that will be sensitive to the issue of gender violence."

Court Is a Breakthrough for Women

The court will be able to prosecute cases of rape, sexual slavery, forced pregnancy, sexual violence, enforced prostitution and enforced sterilization, in the context of armed conflict or as crimes against humanity. The definition and scope of each of these terms will become clearer as the court issues rulings.

The court will also approach trafficking of women and gender-based persecution as crimes against humanity, defined as acts committed as part of a widespread or systematic attack against civilians. The court only takes a case when national judicial systems are unwilling or unable to prosecute the alleged criminals.

Had such a court been in existence earlier, Afghan women living under Taliban rule would have had a place to seek justice. So would the so-called "comfort women" who were forced into sexual slavery by the Japanese in World War II, Nainar said.

For the first time, women will have a chance "to tell what was done to them, name the perpetrators and see them punished," said Dr. Monika Hauser, founder of the German-based Medica Mondiale, a support center for survivors of war-time sexual violence.

Women's Caucus Role Was Crucial

The breadth and specificity of gender crimes in the court's enabling statutes are directly attributable to a global caucus of women that formed in 1997 in the face of apathy and active resistance to prosecuting gender-based crimes.

"Women made a huge difference," said Rhonda Copeland, a professor at the Law School of the City University of New York and director of the school's International Human Rights Law Clinic.

When the court's planners waffled on whether judges should address rape as a crime against humanity, up to 500 groups from around the world offered support, strategies and information to ensure that rape would be considered among the gravest crimes.

"They made it impossible to ignore that women have been left out of justice and that we have to be in it," Copeland said. "If there were nobody there saying 'this is violence,' I don't know how it would have happened."

Court Ends Legal Acceptance of Gender-based Violence

Previously, gender crimes were marginalized in international law. "Crimes against women were excused as normal and inevitable crimes of war," said Katherine Hall Martinez, acting director of the International Program of the Center for Reproductive Law and Policy. In the Nuremberg trials that prosecuted Nazi leaders for war crimes, rape was treated as a crime against the honor of the family, not as violence against women, she said.

Special tribunals on Rwanda and the former Yugoslavia addressed some issues of gender violence, but they are temporary, short-term venues to handle issues specific to those conflicts. The International Criminal Court, expected to begin trials in March 2003, will be a permanent court in the Hague.

The pressure for strong measures on gender violence did not happen without contentiousness. The Vatican opposed the inclusion of forced pregnancy as a crime, fearing that the failure to permit abortion or contraception, which it opposes, could be considered criminal behavior. Countries ruled by Islamic law objected to provisions on sexual slavery, rape and other sexual violations as crimes against humanity unless

husbands and parents were excluded from prosecution for acts against wives or children, said Copeland.

System Includes Provisions to Effectively Protect Women

Efforts to water down the scope of protections for women were defeated, however, and women also secured provisions that ensure that sexual violence is prosecuted in ways that are effective and sensitive to the women involved.

The plan, which establishes the court, an independent prosecutor and an administrative registry, requires a victim unit with expertise in sexual violence to advise the prosecutor and court. The court must have a fair representation of women prosecutors and judges with gender expertise.

More work is yet to come. "We now have to make sure that the court is staffed with the proper personnel," Nainar said. In the next months, the prosecutors and a court of 18 judges will be elected by member states.

International human rights activists also want to see the United States ratify the court, as 66 other nations have done. Then-President Bill Clinton signed the treaty, but ratification by two-thirds of the Senate is still needed. President George W. Bush has indicated that he might "unsign" the treaty, an unprecedented step that would remove the possibility of Senate ratification and American participation. Only countries that ratify the treaty for the court or otherwise accept its jurisdiction may bring cases before it or participate in the election of judges or prosecutors.

The Bush administration, as well as conservatives in Congress, want the United States to be exempt from the court's processes believing that the U.S. political enemies would bring frivolous lawsuits.

But even without U.S. participation, the court will exist. And for women, Copeland said, the court is "a beacon of hope."

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For more information:

Women's Caucus for Gender Justice: - <http://www.iccwomen.org>

Coalition for the International Criminal Court: - <http://www.iccnw.org>

Human Rights Watch, report on Kosovo: - <http://www.hrw.org/reports/2001/kosovo>