

REMARKS FOR IWD 2007

Panel on good practices and examples of specific solutions to eliminate violence and end impunity from the global to the local levels.

INTRODUCTION

When the Yugoslavia Tribunal closes its doors, part of its legacy to the world will be the condemnation of sexual violence against women during the war in the former Yugoslavia. Set against the historical silence surrounding war-time sexual violence, the progress achieved over the past decade has been significant:

- Men who raped and sexually enslaved women have been convicted and imprisoned
- The role of political and military authorities in tolerating and encouraging sexual violence against women during the war has been acknowledged in the Tribunal's indictments and judgements.
- The Tribunal's work has also facilitated the continued prosecution of wartime sexual violence in domestic courts in the former Yugoslavia. Most recently, the State court in Bosnia sentenced to 34 years imprisonment a man for crimes including the rape of women in the Foca region of Bosnia during the war. There are more cases like this to come.

As the Tribunal moves towards the completion of its work, we should seize the opportunity to reflect on the progress made towards ending impunity for wartime violence against women. We should ensure that the lessons we have learned are memorialised and passed on to those who are charged with carrying on this responsibility in the future: the International Criminal Court and others. We should critically assess the limitations of our achievements so far and identify what we need to do in the future to consolidate and extend the progress made.

To contribute towards that process, in my remarks today I will touch upon five of the key lessons that we have learned from our work at the Tribunal; five of the key

practical strategies we have identified for ending impunity for violence against women during war.

First, the commitment to fully addressing violence against women must be enshrined in the governing documents of the courts and tribunals that are charged with the task of achieving justice for women. This serves as an essential reminder to everyone involved in the process and provides an incontrovertible benchmark for insisting on the fulfilment of our promise to women.

The Security Council resolutions establishing the Tribunal expressly condemned sexual violence against women in the former Yugoslavia and made clear the Council's determination that these crimes would be prosecuted. The Statute of the Tribunal expressly refers to rape as a crime against humanity and our Rules of Procedure and Evidence set out principles governing the prosecution of sexual violence cases. Without question these formal, written commitments to prosecuting violence against women triggered much of the progress we have made.

Certainly the coverage of gender issues in our governing documents could have been even more extensive. But it was an important start and helped to ensure that our commitment to women did not slip from the agenda during the course of our work. It also served as a springboard for an even more comprehensive approach to gender issues in the Statute and other governing documents of the ICC.

The **second** lesson learned concerns the need to think creatively about making the justice process feel safe and comfortable for women who come forward to tell their stories. We must reassess our traditional approaches to witness protection to make the process less invasive for women. This is particularly the case in the international criminal justice system where gender, culture and a myriad of other factors coincide to determine the experience of women: but it applies to domestic justice systems too.

Our work at the Tribunal has taught us to openly consider alternative approaches from the various legal traditions, including common law and civil law systems. And this is a lesson that we can incorporate into our approach to gender crimes. For example, one of the key barriers to women seeking justice for violent crimes in common law

countries is the retraumatization that so often accompanies cross-examination in an adversarial system. In civil law inquisitorial systems, where judges control the questioning of witnesses, this problem can be greatly minimised. We need to draw best practices from different legal systems to improve the situation for women seeking justice for violent crimes.

The **third** key lesson we have learned is obvious but fundamental: it is the importance of training and focal points on gender.

Training promotes an environment where everybody involved in the process – investigators, interpreters, lawyers and judges – are committed to ending impunity for violence against women and are equipped with the knowledge required to achieve that objective. The *ad hoc* Tribunals have a mixed record on this so far. For example, we've had cases where judges have demonstrated sensitivity to cultural factors that make victims of sexual violence crimes uncomfortable using sexual terminology in their testimony. On the other hand, we've also had cases where judges have been observed laughing during sexual violence witness testimony. Gender sensitivity training must be comprehensive and mandatory.

Gender focal points also improve the performance of our justice systems in addressing violence against women. The Office of the Prosecutor of the Yugoslavia Tribunal created a sexual assault investigation team and recruited a legal adviser for gender issues to guide its prosecutions for sexual violence, particularly in the early days of the Tribunal's work. Focal points will remain necessary until a universal and unwavering commitment to ending impunity for violence against women becomes entrenched in our collective conscience.

The **fourth** key lesson we can take from our work at the Tribunal is the importance of not compartmentalising the experiences of women during war. While we must be committed to addressing crimes of sexual violence against women, we must not allow that goal to artificially obscure the many other harms women experience: the loss of their homes, possessions and loved ones. As reported by the Tribunal's Victims and Witnesses Section, universally, the women who have appeared as witnesses before the Tribunal say their primary motivating factor is to speak for their dead.

The **fifth** and final lesson I want to mention today is the challenge of re-interpreting existing legal concepts to more accurately reflect the experiences of women. The reality is that we are all confronted with legal systems that, at best, partially address gender-based violence. But there will often be ways forward even in the absence of legislative change. As I've mentioned, rape is expressly listed in the Tribunal's Statute only as a crime against humanity. That has not prevented us from prosecuting crimes of sexual violence under the rubric of other more general crimes, such as torture, enslavement, grave breaches of the Geneva Conventions and even genocide. A great deal of progress is open to us just by changing our mind-set about the existing framework in which we operate.

CONCLUSION

In conclusion, developments in the international criminal justice system over the past decade offer many insights into practical strategies for ending impunity for violence against women.

From the turmoil accompanying armed conflict and transition to peace, comes a great opportunity to craft new justice systems that more effectively address the experiences of women. Increasingly, the world has evidenced a genuine commitment to redressing violence inflicted upon women at the hands of enemy forces during armed conflict. The challenge now is to consolidate the progress and to extend our resolve towards ending impunity for violence against women in all circumstances.