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The Iraqi High Tribunal makes strides toward improving women's rights in international law

By Alyn Gaestel



2 June 2010 [MediaGlobal]: As reported last month by **MediaGlobal**, women activists are working in Iraq to increase women's participation in the government, economic, and legal sectors. Their work in the legal sector is particularly significant as it has the potential to strengthen laws regarding women's rights nationally, regionally, and on a global scale.

The Supreme Iraqi Criminal Tribunal, also known as the Iraqi High Tribunal (IHT), is the court appointed to prosecute crimes committed under Saddam Hussein's rule from 1968 to 2003. It only has 2 women, out of 55 judges, but with the support of trainings requested by the judges and led by the Global Justice Center (GJC), the IHT has been implementing international gender equality laws into their rulings. GJC is an international NGO, based in the US, that works with women to implement international equality laws into national legal structures in transitioning countries.

Gender-based war crimes have been well defined in international law. The Rome Statute, of the International Criminal Court (ICC) was adopted in 1998 and actualized in 2002 when 60 countries signed on. It defines rape as a crime against humanity. And in 1998 the trial against Jean-Paul Akayesu in the International Criminal Tribunal for Rwanda defined rape as genocide.

But while the legal framework is set, the implementation of gender-based laws has been slow, in part because of the stigma associated with sexual violence and rape that can make it more difficult to find the evidence and the political will to prosecute specifically for rape.

Janet Benshoof, CEO of GJC explained to **MediaGlobal** why they encourage the judges to try sexual crimes despite the difficulties of such cases: "If somebody has murdered and tortured a million people, to have to then add rape, the question is why? And so we answered that question by saying that this is part of history, women want accountability, women want reparations."

In the Al-Anfal case women were afraid to come forward to testify for rape, so rape was defined as torture. Honor killings, or the murder of rape victims to preserve family's honor, have occurred at enormous levels in Iraq, which is testament to the stigma associated with sexual violence in the country. It is hard to quantify precise numbers of honor killings, as they often go unreported, but the UN Mission in Iraq reported increases in honor killings particularly of Kurdish women in 2007. In 2008 the southern city Basra reported a 70 percent increase over the previous year. Even before the invasion, the UN special rapporteur for violence against women reported more than 4,000 women had been victim to honor killings throughout the country between 1991 and 2002.

To combat the stigma and encourage women to testify the IHT has implemented strong witness protection measures. Women can choose to testify anonymously and can stand behind a curtain in court.



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These measures were used in the Marsh Arab Trial, when two women testified to rape. Gina Cohen, special counsel for GJC described this as "the first time in the Mideast that women had testified in that manner about the details of the rape."

Marriane Mollmann, women's rights advocacy director at Human Rights Watch, explained to **MediaGlobal** the impact progress in the IHT can have on war crimes trials internationally. "If these cases are tried with a level of seriousness and argumentation — and the judgments will come out with a legal argumentation that is based on these international legal definitions — absolutely that can have an impact on other national court systems," she said.

The Halabja trial currently underway has a particularly unique possibility to further interpretation of international law regarding gender-based war crimes. The Halabja trial concerns the poison gas massacre against the Kurds in 1988. Because the gas destroyed women's reproductive organs, leading to infertility and birth defects, GJC is arguing that the attack was a gender crime. It is the first international legal case to try gender-based crimes separate from sexual assault.

Cohen described the importance of bringing a gendered perspective to the Halabja case: "We're arguing that these chemical gases, while obviously affected men and women, had a disparate impact on women because women, culturally, if they can't bear children in Iraq, they can't adopt children, they get excommunicated from their communities, so becoming infertile has a huge ongoing effect on women."

The strides being made to bring crimes against women to court are important for Iraq, despite the fact that according to Benshoof a "dichotomy" still exists between the IHT and the local courts. The witness protection measures are not in place in local courts, and under the Iraqi penal code rape still requires witnesses to be prosecuted.

However, the judges participating in the tribunal are the highest level judges in Iraq, so given their credentials many of them could sit on the Supreme Court after the tribunals are completed, bringing with them their training and understanding of international laws. Legislators and local judges will also be able to study the decisions made in the IHT and implement legal changes.

Because the IHT is basing its decisions on international laws, other national courts can use their case studies to interpret comparable trials. Furthermore, trying gender-based crimes, and actually implementing the laws on the books are important steps that have only falteringly been taken over the last decade.

While much remains to be done to safeguard women's rights in Iraq and in conflict zones around the world, the legal argumentation presented at the IHT is pushing forward toward the realization of these goals.

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