

Global Justice Now

Investing in Women Leaders as Key Players in Transitional Democracies

Below is a brief introduction to the different legal tools, international instruments and strategic contexts through which the advancement of women worldwide can be facilitated, and how the Global Justice Center is helping to achieve this goal.

Introduction

This is a time of great transformation and opportunity in the realm of women's rights. The development of international law over the past 30 years has laid the groundwork for a sea change for women, while the simultaneous growth of transnational feminism and grassroots women's groups has given new momentum to the global women's movement. The Global Justice Center's mission is to utilize human rights treaties, as well as the energy and knowledge of women's groups on the ground, so that the laws that exist on paper are translated into concrete change for women that can be felt in their everyday lives.

To that end, the Global Justice Center seeks to bridge the gap between high-level law reform and grassroots women leaders. We do this by acting as in-house, pro-bono legal counsel to women's groups worldwide, focusing primarily on groups living in post-conflict countries and democracies in transition. The development of new democracies in such contexts provides small but significant windows of opportunity for women to lobby for representational quotas, law reform, and other lasting protections.

While other NGO's may focus on reporting human rights abuses, or using a single strategy toward law reform, our model integrates the disparate fields of transitional justice, human rights law and gender equality by using a unique toolbox of treaties, UN resolutions and tribunal case law.

CEDAW

The founding document of the international women's human rights movement is the Convention on the Elimination of all forms of Discrimination Against Women, or CEDAW. CEDAW came into force in 1979 and has been signed and ratified by 185 countries. CEDAW is a binding legal document that addresses such rights as access to healthcare and family planning services, education and freedom from discrimination in employment and political representation (among many other rights). This treaty also demands that signatory governments *remove barriers* to gender equality, and actively monitor the situation of women and girls in their respective countries.

Since 1979, CEDAW has experienced almost universal ratification, and has become a vehicle for change in many countries around the world. In South Africa, CEDAW was used to give women and extra-marital children the right to inherit property, a right previously reserved for male relatives of the deceased. In May 2006, CEDAW was used in Colombia to decriminalize abortion in cases of rape, incest or risk to the life or health of the mother, finding that the criminalization of all abortion discriminated against women's right to equality and reproductive health.

The Global Justice Center uses CEDAW in its training of women leaders as a tool for advocating for certain equality rights. For example, the Global Justice Center has worked with the Women's League of Burma to argue for quotas for women in a draft pro-democracy constitution and on the constitution drafting committee itself. In November, 2006, the Global Justice Center also used CEDAW along with other international legal documents for a conference with the Iraqi High Tribunal. Iraq, a country which has

signed CEDAW, has international obligations to protect the rights of women, and to ensure that their constitution and transitional justice processes reflect these obligations.

War Crimes Tribunals

War Crimes Tribunals have offered a new opportunity to examine sexual violence in the context of the rapidly developing area of international humanitarian law. Tribunals allow issues such as rape, which can be culturally difficult to talk about for individual complainants, to be brought into a public space where they can be examined in the larger context of conflict, rather than as acts which may bring shame on an individual or family. The Global Justice Center emphasizes this unique space for gender advancement in its work and seeks to ensure that gender jurisprudence continues to move forward in this important forum.

During the 1990s, the concept of *violence against women in war* became a focus of the United Nations and the international community, largely as a result of the horrific genocides in Rwanda and the former Yugoslavia. In each of these wars, rape was widespread, and used as an integral part of military strategy. In 1993, during the Fourth World Conference on Human Rights in Vienna, these issues became the focal point of international attention and concern, and when the International War Crimes Tribunal for Rwanda (ICTR) and the former Yugoslavia (ICTY) the women's rights community was determined to ensure that the victims of sexual violence in these conflicts were given access to redress and justice.

The *Akayesu* decision (ICTR) the defendant Jean-Paul Akayesu was convicted of crimes against humanity based on the evidence that he witnessed and encouraged the rapes of Tutsi women. The redefinition of rape as a war crime, a crime against humanity, and a form of torture in this decision reflected a new understanding of widespread rape as a *strategy* of war, rather than merely a consequence of militarization, and also led to multiple convictions of rape, outrages upon personal dignity and torture by means of rape at the ICTY. Furthermore, the definition of rape used in this decision was all-encompassing— “a physical invasion of a sexual nature, committed on a person under circumstances which are coercive”—and includes many more forms of sexual violence than what has historically been considered rape.

The definitions and precedents that have emerged from these tribunals have since been adopted by the International Criminal Court (ICC, 2000), the Iraqi High Tribunal (IHT, 2005), and the special court for Sierra Leone (2002), and continue to be powerful lobbying tools in international and domestic courts worldwide. During the Global Justice Center's 2006 conference with the Iraqi High Tribunal, the GJC emphasized these precedential decisions to the Tribunal Judges and argued that the Tribunal had international obligations to convict for rape and sexual violence using the ICTR and ICTY convictions as a model for interpreting the IHT's own statute.

The Rome Treaty of the International Criminal Court and its Domestic Implications

The Rome Statute is the treaty that created the first permanent International Criminal Court in 2002, which is charged with trying individuals for War Crimes, Crimes Against Humanity, Genocide, and Crimes of Aggression. The Rome Statute not only uses the most progressive definitions of rape as both a war crime and a crime against humanity, but also includes forced pregnancy, forced sterilization, sexual slavery, trafficking, forced prostitution, and other forms of sexual violence.

In addition to establishing a framework for holding perpetrators of war crimes responsible for their actions, the Rome Treaty of the ICC has other strategic uses in transitional contexts. It has been ratified by 104 countries. By signing the ICC, a nation pledges not only to abide by strict international standards when trying war criminals, but also agrees to the *principle of complementarity*, meaning that their domestic laws must not contradict the provisions of the ICC and that they must be brought up to the highest international standards. Nations emerging from conflict have an interest in signing the ICC in order that war criminals can be tried in an international court. However, by signing this document, the new states and new governments that emerge from conflict must also adopt *domestic* laws that reflect strict human rights standards. The Global Justice Center used this principle in Iraq, arguing that the Iraqi penal code, which includes archaic mitigated sentences for “honor crimes” was not in accordance with international standards, and should therefore be updated and amended. Similarly, the global women's rights community

sees ICC ratification, especially for transitional and emerging nations, as a key strategy for the advancement of domestic legal reform worldwide in favor of women.

There are also many ways in which the ICC can be a catalyst for reforming not only legal structures, but also public opinion around rape and sexual violence across the world. In the Darfur conflict in Sudan, for example, the international community is very aware of the ways in which rape has been used to terrorize and torture women. Any war-crimes proceedings that come out of this conflict must include charges of rape, and the Global Justice Center is involved in efforts on the ground to ensure that women victims of this conflict have access to redress for rapes committed against them and that cultural obstacles do not keep women from accessing justice.

Security Council Resolution 1325 on Women, Peace and Security

In 2000, the United Nations Security Council unanimously passed Resolution 1325, which addresses the disproportionate and unique impact of armed conflict on women, and recognizes the undervalued and underutilized contributions that women make toward both conflict prevention and post-conflict reconstruction. As a Security Council Resolution, 1325 is international law and all U.N. member states have an obligation to implement it. 1325 mandates that there be a gender perspective in conflict prevention, conflict resolution, and all peacemaking and peacebuilding processes, and that whenever there are men making decisions about transitional governments, women are present as well. 1325 also emphasizes the need to push for women representatives in new and emerging governments, including the possibility of quotas for women in the parliament and the judiciary. In this way, it can be a critical instrument for injecting women in governing processes from the very beginning of post-conflict situations.

SCR 1325 and the provisions it lays out has the potential to dramatically change the government structures of countries in transition in favor of women, provided that there are people in the international community who ensure it is utilized and implemented to its fullest degree. Resolution 1325 and CEDAW together have been used to lobby for quotas of women in the judiciary in Rwanda and in the parliaments of Rwanda and Iraq. Similarly, the Central Asia region is still in the process of emerging from decades of Soviet rule, and is poised to implement a number of positive reforms for women through the use of international instruments. Currently, the Global Justice Center is partnering with the UN NGO Working Group on Women, Peace and Security to conduct a series of trainings in the Central Asia region (Kyrgyzstan, Kazakhstan and Tajikistan) on Resolution 1325 and its implications for those states. It is also working to advocate for the IHT to cite to 1325 as a legal authority in its war crimes proceedings, which would be the first time 1325 has been cited to in this way and would set a precedent for its use as a legal authority in other countries and in future legal contexts.

Conclusion

The time is now to advance a concrete vision of gender justice. In the last 15 years, over 30 new countries were formed. In many regions of the world, new forms of government have replaced military dictatorships or repressive regimes, such as in Iraq and South Africa. As we speak, new constitutions are being drafted, new governments are being shaped, and new laws being passed. We have the tools to ensure that these important windows of opportunity are not lost. But in order to do this, we must reach out to the key players in transitional and emerging democracies, specifically women, and make sure that they are well equipped to advocate for progressive reform.

International Women's Human Rights Timeline:

Below is a survey of significant achievements in women's rights over the past 30 years. It does not intend to be comprehensive, but demonstrates a significant trend toward the codification and enforcement of women's human rights law.

- 1979- CEDAW ratified, marking the beginning of the international women's human rights movement. This landmark international legal document has since been ratified by 185 nations, and has led to positive legal reform in domestic courts worldwide.
- 1993- Fourth world conference on Human Rights in Vienna, where violence against women, specifically in armed conflict, was a major focal point of the discussions, and laid the groundwork for a dramatic shift in the way we consider sexual violence in war.
- 1995- Beijing Declaration and Platform for Action signed by 189 nations, marking great international consensus on a global vision for women's equality, empowerment and justice. The Platform for Action is the practical, specific and comprehensive directive for bringing about this vision, and covers such issues as poverty, education, economics, human rights and armed conflict.
- 1998- Akayesu case before the ICTR. In 1998, the International Criminal Tribunal for Rwanda (ICTR) made history when the war crimes charges in this case moved far beyond the familiar definitions of genocide in international law. The scope and elements of genocide were broadened to include rape as an instrument of genocide. It was also one of the important cases to solidifying rape as torture. Thanks to this case, for the very first time, rape was removed from the private realm to the public domain and recognized as torture.
- 2000- Security Council Resolution 1325 was passed unanimously on 31 October 2000. Resolution 1325 is the first resolution ever passed by the Security Council that specifically addresses the impact of war on women, and women's contributions to conflict resolution and sustainable peace.
- 2002- Rome Statute of the International Criminal Court comes into force, establishing the landmark judicial body of the International Criminal Court, a forum which can be used to defend and uphold human rights in general and women's human rights, specifically. Darfur, Sudan is the first situation referred to this court by the Security Council, opening a strategic opportunity to uphold women's human rights in Darfur, where rape is employed systematically as a tool of war and an instrument of torture.
- 2003- CEDAW Optional Protocol ratified which enables the CEDAW committee to hear specific cases brought by individuals against their states, as well as to independently investigate grave and widespread violations of women's rights.
- 2003- Rwandan Constitution Ratified, Including 30% Quotas for Women in Decision-Making Posts Judith Kanakuze, the only civil society representative and one of three women on the Constitutional Commission, plays a key role in advocating for women's rights in the new Constitution. By October, women had won 48.8 percent of the seats in Rwanda's lower house of Parliament, making it the world leader in the percentage of women in the legislature.
- 2004- Afghanistan Ratifies Constitution with Quotas for Women in Each of the Two Main Chambers of Parliament, 27 and 17 percent. According to this law, if enough women are not elected, then the remaining seats shall remain vacant until the next election fills them.
- 2005 - African Court of Human and Peoples' Rights Established with "Adequate Consideration for Gender." Articles 12 and 14 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights stipulate "adequate gender representation" and "consideration" in the composition of the Court.
- 2006- CEDAW used in Columbia to decriminalize abortion, marking the first time that CEDAW had been used in the context of abortion rights. The court struck down a law banning abortion in all cases, including rape, incest and when the health of a pregnant woman was at risk. The court used CEDAW to explicate how such a total ban violated women's fundamental equality rights.