

WOMEN'S COURT: FEMINIST JUSTICE

JUDICIAL COUNCIL

Preliminary Decisions and Recommendations

Delivered in Sarajevo, 9 May 2015

I. FEMINIST JUSTICE

Women have created the Women's Court in order to develop a vision of feminist justice that transcends state borders and strives for justice, rather than merely fulfilling legal obligations. You - women witnesses - are the leading subjects of the Women's Court. For too long, you have been invisible and denied the right to actively participate in truth telling, history making, and demanding and defining justice. In formal legal proceedings, you are treated as victims or as witnesses providing legal evidence, but in the Women's Court you decided to speak loudly and in your own way. You recognised and defined these crimes and demanded justice. Your voices and experience can no longer be ignored. You have become a recognised part of history. Without you, the Women's Court would not have happened. We honor your courage and honesty, and we thank you for your trust.

We also have great appreciation for the efforts of the organizers, the expert witnesses, as well as activists from the former Yugoslavia, and the whole world, who have made this Women's Court possible.

After two days of listening carefully to the testimonies of women, the Judicial Council makes the following preliminary decisions and recommendations. To give you our first impressions immediately after listening to the witnesses, the Court adopts these with the view to preparing the comprehensive and conclusive judgment in due time.

II. THE FIVE THEMATIC CRIMES

Many different crimes have been committed! The five thematic crimes were identified in the preparatory process, and evidence was presented in these categories to the Court. The Court notes that these crimes are intersecting, and the testimonies showed that these crimes crossed and moved beyond the given categories.

In the face of these crimes, all actors, including local authorities, national governments and the international community, have failed to acknowledge their own participation in these acts, or to deliver justice for survivors.

We have heard testimonies about a large number of crimes, which were survived and heroically resisted by women. In order in which they were presented to the Court:

1. The crime of war against the civilian population

Including but not limited to the following acts:

- Separation, killings and disappearances of children, men, women, elderly people
- Break-up of families and communities
- Indiscriminate shelling and sniper fire
- Forcible removal from, and destruction of, homes
- Siege warfare, including destruction of conditions of living such as denying access to food, housing, water and electricity, and medical treatment
- Imprisonment and collective detention
- Displacement, especially effecting women, inside and outside the region
- Militarisation of civilian and domestic life
- Torture and other acts of cruel, inhumane and degrading treatment
- Persecution based on determined ‘otherness’
- Waging an aggressive war
- Failure to acknowledge that war crimes have been committed and refusal of perpetrators to take responsibility for them

2. The crime of using women’s bodies as a battlefield

Including but not limited to the following acts:

- Deliberate killing of civilian women, and allowing ‘collateral damage’ to disproportionately impact upon women
- Sexual violence in and after conflict, and in private and public spheres of life
- Detention and gender based discrimination in detention, including detention for sexual violence, enslavement, slavery and similar purposes
- Torture and other acts of cruel, inhumane and degrading treatment
- Persecution based on determined ‘otherness’, including being a woman
- Violence against women in and after the conflict, and in public and private spheres of life
- Militarisation of women’s lives
- Forcing women to become refugees and to endure displacement
- Extreme impoverishment of women survivors and other devastating economic impacts on women
- Harm to women of being sole survivors in targeted killing of men (such as defining their experience through, and prioritizing, crimes against men over crimes committed against them)
- Denial of medical care and humanitarian relief
- Damage of surviving war upon women’s health
- Making women the symbolic and material carriers of burdens of war, including the reinforcement of gendered stereotypes and the disproportionate impact on women of loss of family members, unemployment, and intolerant exclusionary social structures.

3. The crime of militaristic violence

Including but not limited to the following acts:

- Militarisation of everyday life
- Militarisation and corruption of civilian economy

- Creation and support of paramilitaries
- Systemic mobilisation and arming of all sections of society, including civilian administration and security
- Production of rigid dualistic gender identities through militarization and violence
- Repression and demonization of women peace activists
- Valuing of militaristic masculinities
- Forced recruitment of civilians into armed, irregular, and security forces, as well into labour in war economy
- Military promotion of drug and alcohol abuse by soldiers
- Inciting violence and creating insecurity in everyday life, such as representing neighbours as threatening ‘others’
- Participation in militarization through acceptance and silence, including support for political regimes committed to militarized states
- Forced recruitment and the displacement of men seeking to avoid conscription, and criminalization of deserters and their supporters
- Creating and perpetuating militarized ethno-nationalist and religious ideologies
- Forced categorization as ethno-nationalist identity
- Persecution based on determined ‘otherness’.

4. The crime of persecution of those who are different in war and peace

Including but not limited to the following acts:

- The violent creation and imposition of differences, based on communitarian, ethnic, religious, gender, sexuality, age, disability, and similar group constructions. These differences were used to divide people and legitimate violent practices of exclusion, including:
 - Everyday practices of hatred
 - Loss of employment, income and social benefits
 - Loss of homes and other property rights
 - Loss of citizenship rights resulting in statelessness and destitution
 - Visible markers of differentiation such as religious insignia and arm bands
 - Making social exclusion, hostility, and harassment the social norm.
- The gendered impact of the creation of these differences, particularly ethnic differences, upon women, such as:
 - Forcing women to take role of bearers and reproducers of the collective identity, such as an ethnic group
 - Forcing women to take on imagined “traditional” roles, such as compulsory heterosexuality, marriage and motherhood
 - Denying women fundamental social and economic rights, such as employment, housing, and education
 - Leaving women with sole responsibility for children, and removing all social supports
 - Burdening women with the responsibility to feed their families and fulfill basic material needs in the context of extreme deprivation.
- Continuation of these acts of persecution into peace, with ongoing exclusions of those being made into others, such as those who are made to belong to an ethnic group or forced to remain in refugee centers.
- Torture and other acts of cruel, inhumane and degrading treatment.

5. The crime of social and economic violence

Social and economic disenfranchisement and discrimination against women in war and peace, which includes but is not limited to the following acts:

- Privatization of socially owned assets under cover of war with profits going to political elites and warlords
- Failing to secure fair, safe, non-exploitative and dignified working conditions, including equal pay and paid maternity leave
- Failure to ensure accrued wages and benefits are paid to employees
- Failure to pay attention to workers complaints' and to address their legitimate concerns
- Failure to halt and reverse the feminization of unemployment and poverty
- Repression of collective actions of solidarity by women workers
- Failure to provide adequate and transformative reparations for war crimes, and instead putting women on social benefits, with resulting greater poverty for women
- Failure to adequately prosecute perpetrators of social and economic crimes and protect the legal rights of women survivors
- Failure to provide appropriate health care addressing the continuing impact of the war and militarization on women
- Initiating and perpetuating social stigmatization of women survivors
- Continuing economic and social disenfranchisement of women survivors and women generally.

These criminal acts constitute violations of human rights, crimes against peace, war crimes, genocide, and crimes against humanity. The evidence showed that all participants in the conflict committed crimes.

These witness and expert testimonies showed us that the nationalist political and military regimes formed on the territory of the former Yugoslavia in the 1990s were responsible for crimes. We heard evidence of the Serbian political and military regime waging a genocidal war, and committing crimes of genocide and ethnic cleansing against non-Serb populations in certain countries that succeeded the SFRY, such as Bosnia and Herzegovina, Croatia and Kosovo. In committing war crimes, the Serbian regime was joined by Montenegrin regimes and local groups that formed themselves through identification with Serb ethnicity. It was also joined by part of the leadership of the Yugoslav Peoples Army (JNA), which exploited the military capabilities of this army. We also heard that on different levels other political regimes committed the crime of the ethnic cleansing of 'others', such as the regimes in Croatia and Kosovo, and gross violations of human rights, such as the regimes in Bosnia-Herzegovina, Macedonia and Slovenia. The testimonies showed all the nationalist political and military regimes on the territory of the former Yugoslavia committed crimes against peace and were engaged in an aggressive war. All these regimes, as well as the international community, refused to protect the citizens of the states or territories in which they were using armed force.

The testimonies showed us how women courageously resisted these crimes at the time they were committed and have organized since then to ensure they will never be committed again. Women have also showed their courage and strength in surviving these crimes and continuing to work together to overcome the ongoing effects that the commission of these crimes has on their lives, and the life of the community. Women have also rejected hateful ethno-nationalist and religious divisions that continue to be enforced by those in power.

We seek justice for all the testifiers, and for all others who have survived these crimes, as well as for those who have been killed or disappeared as a result of these crimes.

III. THE CONTEXT OF THE CRIMES: WAR AS SYSTEMIC CRIMINALITY

Together, the testimonies reveal that these crimes were made possible by systems of criminality, which reinforce and intensify unequal power relations between men and women.

These systems have eight key elements that demonstrate individual responsibility for participation in systemic crimes:

1. The war criminals included political, military, economic and security leadership, and intellectual elites. They created and sustained the conflict, and the fascist ethno-nationalist ideologies that are misogynist, heterosexist, and militarized.

These leaders were supported in this by:

2. The militaries, paramilitaries, and other armed groups that implemented this ideology through the power of arms and fear
3. The media that perpetuated ethno-nationalist ideas of ‘otherness’ and disempowering ideas of womanhood, motherhood, victimhood and the harmful masculinities that support them
4. The professionals that used their skills and positions of power to create and legitimate hateful ethnic, gender and other divisions
5. The newly emerged class of war profiteers, whose self-enriching economic activities sustained the wartime economy. These activities impoverished the general population and increased the suffering of women in war, which continues into post-war feminization of poverty
6. Senior government and administrative officials who devised and implemented discriminatory and violent regulations that directly impacted upon wartime survival of women. This continues in the post-war period and is not addressed by the provision of reparations and redress
7. Religious institutions and religious leaders who participated in these systems of criminality, and
8. The international institutions and governments that failed to protect those under their care.

IV. RESPONSIBILITY FOR CRIMES

The Judicial Council of the Women's Court finds:

1. All the groups named above that participated in this system of criminality are responsible for crimes committed during and after the war: political, military, economic and security leadership and intellectual elites; militaries, paramilitaries and other armed groups; the media; war profiteers; senior government and administrative officials; religious institutions and leaders; international institutions and other governments.

2. All political and security regimes that appeared before and after the dissolution of the SFRY and governments that succeeded SFRY are responsible for their part in the planning, execution and concealment of the crimes that have been described. These actors must acknowledge their responsibility publicly, clearly and unequivocally.
3. Individuals who supported, condoned, or turned a blind eye to the commission of the crimes that have been described are also responsible for their part in these crimes. We note that public civil responsibility also includes the alleviation of the consequences of these crimes, including supporting those who continue to suffer the ongoing impact of these crimes.
4. Religious communities and leadership also bear responsibility, where they have inspired, concealed or justified crimes and violence, particularly where those crimes aimed at the subordination of women.
5. Responsibility also belongs to individuals and corporations that profiteered during the wars and in the post-war period.

All of these crimes share a common thread: they are directed against individual and collective human dignity. The minimal conditions for human dignity include life in peace, three meals per day, a secure roof over one's head, the absence of violence, decent work for adequate pay, the social rights to education and health, and solidarity with and amongst women within a supportive community. There are too many women for whom these conditions are still not available, despite so-called peace. Governments in all the states that have succeeded the former Yugoslavia must fulfill everyone's basic human rights. We demand this unconditionally.

Responsibility for these crimes continues into the current failure to recognize and offer redress for these crimes, and to redistribute resources and power for a more just society. Women must be active and meaningful participants in creation of such a society.

V. RECOMMENDATIONS

Together with all those who have listened to your testimonies, the Judicial Council of the Women's Court has heard your calls for truth, justice, reparations, and a commitment that these crimes will never recur. The following preliminary recommendations are directed toward that end.

1. The history that is presented by these testimonies and the five years of preparation for the Women's Court must be recorded and made public in many ways. This includes recognising the agency of the witnesses in the making of this history, working with them as the agents rather than as the objects of justice. In addition to the publications prepared for the Women's Court, we recommend this new history that is being made become widely available through radio, TV and in social media as well as in teaching, especially in history books, text books and libraries. There should also be monuments and awards honoring women survivors and resisters. We commit to take what we have heard here and make this information and analysis more public in our countries and globally.

2. There must be an end to militarism and to the ways in which it manipulates and reinforces gender roles. Full disarmament should be implemented and military spending must be reduced in favor of spending for social needs. The enforced mobilization of civilians by the military and the privatization of security must be opposed.
3. Governments must respect, protect and fulfill all the human rights of women, including the right to work, to equal and regular pay, to paid maternity and parental leave, to adequate housing, social security and health care, including reproductive and sexual rights. The particular impact on women of unpaid and invisible care work should be recognized and remunerated. Observance of ILO (International Labor Organization) and CEDAW (Convention on the Elimination of all Forms of Discrimination Against Women) standards should be implemented as the minimum obligation of governments and employers.
4. The privatization of public goods and of state responsibility for the social welfare of its citizens must be reversed. Social and economic justice is both an individual and a collective right for all.
5. Governments have a due diligence responsibility for providing women with justice and working to end all forms of violence against women and human rights abuses in war, as well as ‘peace time’. This requires the provision of services, such as health care, crisis support, safe housing, legal aid and other forms of social security and support.
6. Governments have responsibility for providing transformative reparations and redress, and for ensuring comprehensive justice for survivors. This also requires effective investigation, successful prosecution and adequate punishment of those responsible for these crimes. Ending of impunity must prevent convicted war criminals from holding public office. Equally, measures must be taken to prevent their celebration as heroes. Women survivors must be empowered to actively testify to the crimes against them, and to participate in defining justice themselves.
7. States and other social institutions (private and public), such as the media, educational systems, religious entities, families, as well as individuals, all share in responsibility for ending the patriarchal, heteronormative and militaristic attitudes that perpetuate and feed all forms of violence and discrimination against women.
8. Individuals and communities at all levels must undertake to condemn intolerance and violence on the basis of all differences (such as ethnicity, nationality, religion, gender, sexuality, age, or disability) that is used to divide and exclude people. In particular, ongoing practices of hatred based on these grounds must be challenged and shifted toward trust building and respect for the basic human dignity and rights of all.

In all these processes women and women's history must be recognized, as well as women's meaningful participation in all the decision-making secured along with equal distribution of resources and power.

Women say: Truth, Justice, Reparations, Solidarity and Never Again.

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