

Sexual violence, access to justice, and human rights

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The patriarchal framework of justice which reflects gendered stereotypes, cultural and traditional prejudice has to change. Whilst there is slow progress in implementation, international law is drifting inexorably into recognising the integrated role of human rights in addressing sexual violence, Madeleine Rees analyses how this can be done.

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Sexual violence, access to justice, and human rights. Taken separately, each of these issues would mean something different depending on whether you are the lawyer, the human rights activist, an objective third party such as the man/woman on the street, or whether you are, in fact, the person who survived the first, demands the second and wants the third.

There is a tendency to over complicate the term human rights. There is also a tendency to try to undermine its universality by talking of cultural relativism, religious sensitivity, and traditional values: language which is used for the curtailment rather than the realisation of rights. In simple terms human rights are what we all want and need, to have a life or to improve it. Whether it be health care, education, food, water, housing, protection from violence and so on. And we do not want that provision to be predicated on a particular characteristic or identity, such as sex, race, colour, religion etc. Call them needs, wishes, wants or desires but in simple terms most people want to have them fulfilled even if there is no real expectation that they will be. As a matter of law the responsibility lies with the State and no amount of privatization, globalization or failure to fulfill obligations takes that ultimate responsibility away.

Many years ago I was a volunteer at the Birmingham rape crisis centre. One of the services provided was to accompany the woman to court if there was a prosecution. I never went. Not once. Less than 9% of rape cases ended in prosecution. No access to Justice, no protection of human rights for the survivor. Today that figure for domestic prosecution in the UK hovers around the 6% and there is even less provision of services for survivors than there was in almost 30 years ago.

What does that mean for the survivor? A denial of justice, a denial of redress, a denial that what she experienced is something condemned by society. And if she does make it to court and the issue of consent is raised, as it almost always is, then what she actually experienced is changed into a different story, one so damaging to her personally that most women cannot go ahead with the case. Such are the power dynamics built into law when they are not truly reflective of the gendered nature of human rights. Take that scenario and magnify it several thousand times to what happens in armed conflict.

Sexualized violence is predominantly against women and girls, but there is considerable evidence that men are abused in this way in armed conflict but that it was not talked about or even researched. This is important, and I don't think we have realised how important. Rape is a crime of power not of sex. A truism accepted as theory for many years but not responded to as a matter of legal interpretation. Even in the ad hoc tribunals, despite rules to the contrary, the issue of consent remained as a possible grounds for defence and was used in cases before both the ICTY and the ICTR to the trauma of the women testifying. Would it ever be used as a defence to the rape of a man? I doubt it.

What is changing here is the patriarchal framework of justice which is based on gendered stereotypes and cultural/traditional prejudice. The truth is that rape is perpetrated by some men who have power, against a targeted population that don't, so as to assert that superiority and denigrate and destroy the

communities targeted. And it works! It works because our social and cultural structures are deeply entangled with constructed views on gender and sex, ideas of women as the property of the male, and of her being used goods when she is no longer pure. For men it is about humiliation and the destruction of his masculinity, the one that has been created around him and for him by cultural and social mores.

The obvious thing to do is to stop it! We have been saying that for how long? But I think there is a shift, a strange sense that the different elements that must be brought together to really make a difference are being taken seriously in the places where the power lies.

If we look at how we could address sexual violence from a human rights perspective it would be this: work for greater gender equality - which does not mean counting the number of women in governance structures, military et al - but lies with real political economic analysis. Effective response through education, health care, employment, social welfare strategies which address these inequalities and, as part of this to address constructions of masculinity which lead to violence.

Element 2 would be the accountability framework. Ensuring that the crime is properly described in law so as to accurately reflect what happened to the individual and not the alternative history so often created by references to consent. Ensure effective investigation with trained investigators who understand the consequences and personal impact of the crime.

Element 3 is the provision of services, which must not be conditioned by participation in prosecutions, so that the survivor, male and female, get the sort of support that is needed in terms of health care and psycho social support. Providing legal advice at this stage is also crucial so that the agency of the individual can be claimed and this support must continue if the individual decides to witness for the prosecution

Element 4. Measures to “debunk “myths about crimes of sexual violence and the gendered roles which make that inevitable.

Element 5. Security sector reform that is not just about weapons and defence but is about real security and includes gender analysis and the participation of women.

The details of how this could be done are, as in all things, contextual but, and this is where the hope is springing from, International law is drifting slowly and inexorably into this way of thinking. There are the Security Council Resolutions 1325, 1820, and 1889 which have taken us some of the way, particularly 1889, but there has been little implementation in real terms. But then take a look at the G8 Declaration on Preventing Sexual Violence in Conflict adopted in London 11th April this year. Of the five elements listed above it has them all! Plus an additional one relating to funding, another re international cooperation and places an emphasis on the protection of human rights defenders.

The shift towards looking at men and men’s responsibilities is marked. I did not think I would see eight of the most powerful economic forces demanding an engagement of men and boys to prevent violence against women, essentially to address violent masculinities.

I have a tendency to be overly optimistic, but optimism does not mean naiveté. Once the words are on paper and soft law is created, we are opening a door. Addressing sexualized violence through justice alone, however is not a panacea, and we must be careful not to over emphasize sexual violence to the exclusion of all the other experiences women have during conflict, a danger that can lead to us focusing on only one element of women’s experiences and if we look and do not find it, then moving our attention elsewhere. But, it is an entry point to help us analyze and better understand the nature of gender and gendered relations, it is an entry point to help us develop better our understanding of the social, economic root causes of violence and violent conflict. And if we understand it, we are much better placed to prevent it.

Madeleine Rees is speaking at the Nobel Women's Initiative Conference May 28th -31st, Belfast,

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