

## **Women in Darfur Look to ICC**

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The court may offer the only hope for many rape victims to see justice done.

If you are a woman in the Darfur region of Sudan who has been raped and you want to lay a charge, it is virtually certain that legal officers will automatically reduce your allegation to one of assault. If you persevere with your rape accusation, you will be told to do the impossible and provide four male witnesses to support your charge.

As a result, sexual violence goes almost totally unpunished and is one of the biggest violations of women's rights in Darfur. It is why members of the Darfur Consortium, a group of African civil society and women's rights organisations, have high hopes that the new International Criminal Court in The Hague will be able to change the situation.

Rape, according to the special report on Darfur by Italian judge Antonio Cassese for United Nations Secretary-General Kofi Annan, is of epidemic proportions in Sudan's far western province, a largely semi-desert area the size of France.

Most of the rape, according to the Cassese report, which is now the basis of an ICC investigation into human rights crimes in Darfur, is carried out by government Arab militias called janjaweed (armed men on horse and camel backs).

The victims are mostly black African Muslim women from the tribes who inhabit the dry plains and the well-watered mountainous central area, the Jebel Marra, rising to 10,000 feet. Innumerable accounts of janjaweed rape have been recorded, including accounts by Judge Cassese himself, formerly the first president of the war crimes tribunal set up in The Hague to deal with crimes against humanity in the former Yugoslavia.

In a typical case, a teenage student told Cassese she had been one of the victims of mass rape during an assault by janjaweed, wearing Sudanese army uniforms, on her boarding school at Tawila, north Darfur. She described to the judge the rape of her best friend and of other girls in the school.

The Arab militiamen arrived in a lorry early in the morning while government soldiers surrounded the school, said Cassese in his 176-page report given to Annan last year.

"When they attacked the boarding house they pointed the guns at the girls and forced [all 110 of] them to strip naked, took their valuables and all of their bedding," said the schoolgirl. "[My friend] was taken from the group, blindfolded, pushed down to the ground on her back and raped. She was held by her arms and legs. Her legs were forced and held apart. The rape lasted for about one hour.

"[Other girls were] screaming as they were raped. After the rape, the janjaweed started burning and looting."

In the Jebel Marra town of Rokero, an international aid worker described to the Washington Post's Emily Wax the mass rape by the janjaweed of some 400 women. "It's systematic," the aid worker told the reporter. "Everyone knows how the father carries the lineage in the culture. They [the janjaweed] want

more Arab babies [by African women] to take the land. The scary thing is that I don't think we realise the extent of how widespread this is yet."

Such reports support independent investigations by the Geneva-based World Organisation Against Torture and the Amel Centre for the Treatment and Rehabilitation of Victims of Torture in Darfur.

For example, seven young women were gathering firewood outside the Deraij refugee camp in southern Darfur when they were attacked by janjaweed militiamen. They were beaten with guns on their heads and chests and stripped. Four of the women escaped, but the other three were taken to an abandoned hut and mass raped. One of the women was pregnant and subsequently miscarried. All seven were treated for serious injuries by Amel Centre doctors.

Since the Darfur conflict began unfolding in February 2003, intolerable crimes against humanity have been committed in massive and systematic ways. More than two million people have been forced to flee their homes and more than 70,000 people have been killed. Women and children have been the main target of these atrocities, including mass sexual violence. They are vulnerable to rape whenever they venture out of the refugee camps in search of water or firewood.

Despite the fact that rape survivors frequently say they can identify their attackers, justice has been denied. But now the decision by the UN Security Council to refer the situation in Darfur to the ICC may offer the only hope for many women and girls in Darfur to see justice done.

Women's rights in Darfur are freely violated because of gender-based discrimination in the national laws of Sudan. According to Jane Lindrio Alao, a psychologist with the Amel Centre, rape is virtually impossible to prove in Sudanese law. Most people accused of rape are only charged with having committed assault, which carries a maximum jail sentence of one year. Rape can only be said to have occurred and admitted in court if there are four male witnesses. "All four should witness the actual penetration," said Alao. "So even if you could get two such witnesses, the accused could not be charged. How many women have the luxury of having witnesses to their rape?"

The archaic and discriminatory laws have led to perpetrators of sexual violence acting with impunity. Alao confirmed that the majority of perpetrators of rape in Darfur are from the janjaweed and Sudan's armed forces.

The Sudanese national courts are affiliated to the government party and have therefore failed to provide justice to the people of Darfur. Women who dare to take rape cases to court are frequently arrested and accused of waging war on the government.

This dire situation is compounded by the fact that the majority of civil society organisations in Sudan are pro-government and therefore do not acknowledge rape and other human rights violations as having occurred in Darfur. "The Amel Centre is the only NGO providing legal aid for rape victims to seek redress and justice for crimes committed," said Alao. "Most of the other NGOs deal with sanitation and other humanitarian efforts."

Previously, most high profile responses to the Darfur tragedy came from NGOs and governments with headquarters outside Africa. Civil society in Africa was not raising its voice.

To fill this glaring gap, the Darfur Consortium was created 15 months ago. It brought together more than

200 African civil society organisations, including FEMNET, and campaigned to support Judge Cassese's recommendation to Annan that the Darfur situation be referred to the ICC for further investigation. Cassese's report argued that the Sudanese justice system had shown itself unwilling or unable to prosecute rape and other human rights offenders.

In March last year the Security Council approved Resolution 1593/2005 granting the ICC jurisdiction to investigate ongoing atrocities in Darfur.

Although some members of the Security Council, such as Algeria, Nigeria and the United States, felt that an African tribunal would be the most appropriate mechanism, the Darfur Consortium argued that the ICC was both an African and an international mechanism. According to Dr Yitiha Simbeye, a member of the consortium and dean at the Faculty of Law in Makumira University, Tanzania, the consortium further supported the referral to the ICC because it is a permanent court and this would therefore save on time and resources required to set up a new special court. "The ICC referral and present jurisdiction also signals to the Darfurians that the whole world is concerned with the situation in Darfur," said Simbeye.

The 1997 Rome Statute creating the ICC identifies crimes of sexual violence such as rape, sexual slavery, enforced prostitution and forced pregnancy as crimes against humanity when they are committed as part of a widespread or systematic attack directed against a civilian population. The ICC has created a Victims and Witnesses Unit within its Registry at The Hague to provide protective measures, security arrangements, counselling and other assistance for witnesses and victims. The ICC therefore offers an alternative avenue for justice - other than that provided by Sudan - for the women and girls who comprise almost ninety per cent of the victims in the Darfur conflict.

Although the ICC has severe limitations, the Darfur Consortium has high hopes for it and is prepared to give full support to the ICC prosecutor Luis Moreno-Ocampo in the investigation process.

For the women's movement in Darfur, what they are looking for is fair trials and compensation to the victims of sexual violence. "Refugees and rape victims among the women are keeping silent and protecting themselves, waiting for the day of the ICC," said Alao.

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