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24. Dispatches from the Front Line (1998)

Sarah Maguire

I want to talk about silence. I want to talk about the silencing effect of sexual violence, both in the national and international context. I want to talk about silence because rape is one of the most effective mechanisms men have for controlling and silencing women. Three days ago I was talking with some of the women who have survived the fall of Srebrenica in Bosnia; they have retreated into silence because nobody listened then and nobody is listening now.

We have two war crimes tribunals, what they call ad hoc tribunals — the International Criminal Tribunal for Former Yugoslavia (the ICTY) and the International Criminal Tribunal for Rwanda (the ICTR). The Yugoslav Tribunal is vastly under-resourced; the Rwanda Tribunal is virtually unresourced — and there's no prize for guessing why there should be a difference in funding for a European tribunal and funding for an African one.

All over eastern Bosnia and Herzegovina, you ask the women: 'What about the Tribunal?'; 'Will you talk to the Tribunal?'; 'Why not go to the Tribunal?'; and the answers they give are various: 'The Tribunal hasn't been here'; or 'They came here but they did nothing'; or 'They came but we won't talk to them'. You also hear — and this is usually from men: 'Our women are different; our women won't talk; our women have silence; our women have dignity; it's different for our women'. Well, that's complete rubbish, isn't it? It's 'different' for all women; we are all 'different'. It's not always that those men don't care, or that they want to hide what has happened to women, but that it's easier for them - easier for all of us, probably — not to confront the reality of sexual violence. And this holds true for sexual violence in the international or the domestic context. It's easier not to talk about it.

Personal silence

Although sexual violence affects all of our lives, it's an issue that we rarely discuss, even if we are feminist activists, in terms of our personal lives. We don't like to

admit, even to each other, about being scared of sexual violence. We don't like to tell each other that we fear the step behind us on the dark street at night. Women don't like to tell each other that they may fear the man behind our own closed door. It's the same silence, nationally or internationally. We are expected to get on with our lives; we are expected not to make a fuss. We talk about 'date rape'; we don't talk about rape by known men.

The other day, a friend of mine in Bosnia was telling me that the Minister of Health had been to visit their organization. It's a fantastic organization; it works with women exclusively and has done since around 1992. The Minister of Health was very impressed and he said: 'You know, it's amazing about our women. You can beat them and beat them and the only thing that happens is your arm gets tired. Women don't break.' We are expected to stay silent.

Rape as a war crime

In this context, it's amazing that both of the ad hoc tribunals have recognized that rape constitutes a war crime; that rape can be a constituent of genocide, of crime against humanity, or a war crime - a grave breach of the rules and customs of war. I still think that the whole concept of 'war crimes' is bizarre: the notion that it's acceptable to do certain things in war, but if you go a little bit too far, if things get out of hand, then that's a breach of the normal and acceptable code of practice for two sides (or rather the men from two sides) who have decided that they're going to start fighting each other.

Rape wasn't recognized as a war crime in the Nuremberg trials after the Holocaust. It just wasn't an issue; it wasn't addressed; it didn't happen, and if it did happen, it was something to be kept silent about once again. So the fact that rape is recognized by the ad hoc tribunals, and by the permanent International Criminal Court, is a huge step forward. It's a step forward that we made - feminists from all over the world. We made that step forward by insisting on being heard, year after year, and going on and on about the need to recognize sexual violence and to name it for exactly what it is.

So rape is now a war crime; it can be genocide and a crime against humanity. But what's actually happening? Are men by the score from former Yugoslavia or from Rwanda being prosecuted? Are the prisons full of serial rapists, or of men who order the mass rape of women in schools and other camps? No. The tribunals are failing women. I fully support the tribunals and recognise the need for them, and am a passionate advocate for the permanent International Criminal Court. But they're failing for various reasons.

A case for the prosecution

First of all if you're going to have a trial, you have to charge somebody, and the tribunals are not charging anyone with sexual violence. There are a few indictments, but by and large they're not charging. Part of the reason for that, I am told, is that it's easier to prove genocide. It's easier to prove genocide simply by pointing to the murders of — usually — men. The way that the war in former Yugoslavia was conducted was that, for instance, a village would be targeted — 40 men would be taken from the village, put on a bus, taken to a mass grave and shot through the head. Forty women would be taken, put on a bus, taken to a school or somewhere similar, and raped systematically over a period of weeks or months. But you don't need to charge the rape, because you've got the murders and you can prove the genocide that way. So once again there is silence over what happened to the women.

Secondly, to charge rape, you have to have a witness, and witnesses have to testify. For a witness to testify, she has to be protected, and not just at The Hague when she goes to the Tribunal, but before and after. It's no good dumping women back in the centres for displaced persons — and saying, 'Thanks very much for giving your evidence, thanks very much for talking to one of our investigators, sit there and wait, and while you wait, the man you accused, who probably lives up the road in Republika Srpska, will know that you have given evidence, will know that you have talked to the investigators, and you and your family — what's left of it — will not be protected. But please just sit and wait.'

Thirdly, to be a witness, the woman has to believe that what she's been through is not her fault. Now, you'd think, wouldn't you, that where women have been raped in war, no-one would believe it was their fault. But even in that context, a woman can believe that she was somehow different from the women who managed to escape rape, and that somehow it was her fault. In this way, women find themselves stigmatized and further silenced.

Fourthly, the women have to be supported. When I talk about support for rape victims and for witnesses, I'm not talking about sitting around on beanbags and making cups of tea. What I'm talking about is adequate provision for people whose rights the international community claim should be protected. When a woman has been raped, her fundamental human rights have been breached irrevocably, and we - the international community - have a responsibility to take care of her and all such victims.

A particular crime

Some have questioned whether rape is a particular crime, or whether rape victims are a particular group of victims. Rape is a particular crime because of its

relationship with heterosexuality. It's a particular crime because of what it does to women, what it does to its victims — what men do to their victims when they rape. It's not the women who are the particular victims, it's the crime itself, and that's what we have to recognize. Because of feminist activists and feminist lawyers, there are provisions in the ad hoc tribunals that are useful for protecting victims of sexual violence — provisions that could and should be brought into domestic jurisdictions. For instance, it is not possible for a man accused of rape as a war crime to cross-examine the victim about her previous sexual history. This practice is outlawed. Now if this is possible with a man accused of mass rape, or even raping just one woman, in a tribunal at The Hague, then why can't it happen at the Old Bailey? Why can't it happen at the Crown Court in Doncaster?

As a lawyer, I would maintain that previous sexual history is *never* relevant. I work as a defence barrister and I refuse to take rape cases, despite the risk of being disbarred. I refuse to stand up there with my advocacy skills, and say to a woman, 'You had sex in the back of a car once, didn't you?' How can I do that? How can I stand there in my wig and gown and criticize a woman for being a woman? Because that is what allowing sexual history evidence really means. I absolutely refuse to do it.

The 'consent defence' in war crime

In the ad hoc tribunals, consent can only be an issue where the defence raises it. They have to show that it's relevant to that trial. Some would say that if you're talking about anonymous rape or a perpetrator who has ordered the rape of many women, then of course consent can't be an issue. In fact, many of the women who were raped during the war in the former Yugoslavia, were raped largely by men who knew them very well — by school friends, neighbours or men who lived in the next village, so one could imagine these men arguing that: 'I'd known her since we were schoolmates and, despite me being a Serb and she being a Muslim, and despite the fact that our country — now our countries — were at war, in fact she's always fancied me, and this was just an opportunity'. But at the ad hoc tribunals, if a man wants to raise consent as an issue, he has to show why, and the burden is upon him to establish that consent really is a relevant issue. Again, if it can be done there, then why can't it be done here?

It is necessary for victims to operate within a 'culture' of belief. For example, last August I visited the UNHCR in Zagreb where I spoke informally to a women refugee protection officer about a woman I had met from 'K' who told me that she and all the women from the village had been taken to the local primary school and

had been subjected to sexual assault over a long period of time. The protection officer said, 'Oh yes, 'K', but it happened such a lot that they're all now saying it happened, and you can't believe *them*'. Now, if you can't believe *them*, who can you believe? Without a culture of belief, women will not come forward and testify. I would not take myself from a village where I was trying to repair my life and my home and find out what had happened to my relatives and put myself in a place where people were going to sneer at me and say 'Raped? Pah! You're making it up.' I wouldn't do it and I wouldn't ask anyone else to do it.

Bringing rapists to justice

Finally, even if you have all these things: you've got a charge; you've got an indictment; you've got a witness who's prepared to testify; she's protected; she's supported; she's believed — you then need a defendant. The prisons at The Hague are going to be empty by the end of December. Not because there's a shortage of war criminals, or of *indicted* war criminals. Not because the streets and the walls of Bosnia are not almost papered with wanted posters — made by women's groups, not the United Nations — which list and describe and give photographs of wanted war criminals. There's no shortage of men waiting to be arrested; there's also no shortage of French soldiers for instance, standing beside them, watching them have a cigarette; there's no shortage of British and Welsh soldiers watching those men having cups of coffee in coffee bars: the big four - as they're known - are occupying positions of power and influence throughout the former Yugoslavia. Our elected representatives and others negotiate with them or their representatives on issues of national and international security. Well, the women say 'Why should I bare my soul, put myself in danger, isolate myself from my community, risk being accused of lying and of fantasizing, when the states who are responsible, and who have the power, do not implement the very law that I am expected to employ? Why should I?'

One of my plans before I went to Bosnia was to learn enough Bosnian to walk up to Radovan Karadžić [the leader of the Serbs in Bosnia] and say: 'Are you Radovan Karadžić? Pleased to meet you. I've got a warrant for your arrest.' I talked to my friends about it and they said: 'We'll come to the funeral'. But there are plenty of men — soldiers - in the former Yugoslavia, who we pay for, who could do exactly that. But they won't. They won't because people say: 'We don't want to risk our boys.' But we were prepared to risk our boys to go and fight in the Gulf; we were prepared to risk our boys in the Falklands, over territory and oil; but we're not prepared to risk our boys for the lives of women. Once again, women's lives, women's futures are

being sacrificed to some nebulous idea of political stability. As women, we know that while the threat and the reality of sexual violence against us hangs over us and permeates our everyday lives, we do not have political, or any other, stability.

Despite all this, I welcome the fact that sexual violence *has* become an issue for the war crimes tribunals. It's because of us and because of our feminism and our activism and our bloody hard work. Never give up. Refuse to be silenced. And keep up our demands for justice and fair treatment for women.

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