

**Judge Elizabeth Odio Benito, President, Inter-American Court of Human Rights**

**“My Experiences as a Judge on Three International Tribunals”**

**Sponsored by the Kaschak Institute for Social Justice for Women and Girls**

**Binghamton University, Binghamton, New York**

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Thank you so much. Hello friends, professors, faculty members, students from Binghamton university in New York state, and particularly Kaschak Institute for Social Justice for Women and Girls, and especially my dear friends Elyn Kaschak and Patricia Sellers. Thanks to all who have organized this talk, in which I am going to tell you about some of my experiences during my life as a judge in two international criminal courts: The ad hoc Tribunal for the Former Yugoslavia [the International Criminal Tribunal for the former Yugoslavia] or ICTY, known by the acronym in English, and the International Criminal Court (ICC), and a regional court, the Inter-American Court of Human Rights, you have given me the opportunity, for which I am very grateful, to share relevant experiences in my life—some positive and others not so much—from courts

We begin in Vienna in 1993. A Viennese spring night in June of 1993 with some friends and members of NGOs [non-governmental organizations] from many countries asked me to join a court of conscience. I attended the worldwide conference, organized by the United Nations, in which hundreds of women made up part of the official delegations of governments that together with various hundred more from civil society, we joined forces in obtaining an unpublished objective: the international community would recognize that the rights of women are also human rights. I led the official legislation of the Costa Rican government.

In Vienna, there was also a large group of female victim survivors from the armed conflict that at that time had destroyed Yugoslavia. From the start of this civil war that exploded in the Balkans in 1992, the international press reported that sexual violence, committed against women of all ages and ethnic groups, was used as a weapon of war, to terrorize, threaten, and kill all those involved. The international community attended insensitively to the horror of the massacre. After all, violating women and sexually abusing women was seen as a collateral effect of war that did not impact or apply to international law. But never before this war was it known that same sexual violence was being used as a war weapon. In Vienna, groups had arrived seeking help for female victims of these crimes. To give them a voice and space to report what happened, the NGOs organized this court of conscience, which they asked me to join and I accepted. For several hours that night, we listened to heartbreaking testimonies from survivors' accounts of individual and collective rape, brutal torture, sexual slavery, forced pregnancies—



particular court no less? I have asked myself these questions many times and I have thought of some possible responses. One is that meeting and hearing the victims speak of the atrocious sexual violence that we suffer as women, just for being women in all armed conflicts, left such a lasting impression on me that I became committed to finding justice for these women. I credit



Patty [Sellers] referenced in detail, was adopted unanimously in November of 1998. It classified raping a woman for being a woman as a war crime for the first time. My two male colleagues supported my proposal, protected in the Convention against Torture, without reservations. Valuable support also came from the Office of the Prosecutor, where the very distinguished professor Patricia Sellers took on an important task regarding this topic alongside her researcher and prosecutor colleagues. In order for an act of sexual abuse committed against a woman based solely on account of her sex to be considered a war crime it does not need to be repeated. This is what we were defining in *elebi i*. I remember very well interrupting a defense attorney's interrogation of one of the defendants who was accused of raping a victim that included questions such as "So they only raped her once?" In a furious voice, I interrupted and said, "Excuse me, in your opinion how many times does one have to rape a woman for you to consider them to have committed rape?" He apologized and changed the topic.

ICTY (International Criminal Tribunal for the former Yugoslavia) set historical precedent for many years. Sentences such as *Tadi*, *elebi i*, *Furundžija*, and many others led the way for a new branch of International law that today we call, International Criminal Law. One had to push boundaries, but we made the conscious decision to do so. Thank you, Gaby, and thank you, Patty for being there. This corpus juris, the performance of judges and prosecutors, and similar case law from the ad hoc tribunal in Rwanda were the unspoken basis for what was approved in July of 1998 in Rome, the International Treaty, which contained the statute of the International Criminal Court (ICC).

Personally, when I think back on these memories, I realize that those five years of my life in the ICTY were defining moments in my constant fight against sexual violence that women continue to suffer on account of being a woman, during and outside of armed conflicts. But also, in my fight, we as women integrated the national and international tribunals and our presence, minor as it has been, is crucial in the decision-making process. As the beloved United States Supreme Court Justice, Ruth Bader Ginsburg, once said: "Women belong in all places where decisions are being made."

In 1998 my appointment in ICTY ended and I returned to Costa Rica. In the following years, I

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became part of the statute. In the proceedings, it included the participation of victims of war



Copelon (who left us too soon), and Kelly Askin. We wanted to settle the gender perspective

without further prosecution or obligation of reparations. But to be fair, very important changes began to foster a judicial attitude in the ICC after the appointment of a woman in the role of The Prosecutor, Fatou Bensouda. In 2014, for the first time the Office of the Prosecutor published an important document that established the policies that applied to the investigation and charges of sexual violence crimes. Because of this change in perspective, the Office of the Prosecutor presented a very important case against the political and military leader, Jean-Pierre Bemba, Vice President of Congo and leader of a militia accused of war crimes and crimes against humanity committed in the Central African Republic. For the first time, all of the charges included different sexual violence crimes, because of Prosecutor Bensouda. The Court that delivered a sentence of condemnation in 2016 included women, among them its President, Judge Silvia Steiner. They drew up a historical sentence which condemned Jean-Pierre Bemba to 18 years in prison. The ICC still has a long way to go, however, as the court of appeals annulled the sentence in its entirety and the defendant was set free. It was a dramatic reversal for international criminal justice and for the victims of the crime.

Fortunately, in 2019 the Court delivered two crucial sentences regarding sexual violence, one of them against another man from the war in Congo, Bosco Ntaganda, that included a crime against humanity for sexual slavery. In the courtroom that delivered the sentence, there was





With this brief introduction of the Inter-American Court, you can understand that my appointment as judge to this court in 2016 was a radically different experience to my previous experiences. First of all, it was not a criminal court that had barely just begun, and perhaps most importantly, I had already had many years of experience in the field and in dictating jurisprudence and justice of the law for victims of human rights violations. I was introduced to the world of international criminal law during my professional training and activism in human rights, particularly those of women. In the ICTY and the ICC I learned so much and those experiences have given me, to this day, a maturity both personally and professionally for which I am very grateful. In these courts I had the unique opportunity of acquiring new perspectives in the examination of women's rights and their protection in armed conflicts.

When I joined the Inter-American Court with all of my previous experiences, I felt that I was closing my existential circle. It began with human rights that took me to Vienna in 1993 and now I had returned to this world that felt so familiar. Since 2016, being the only woman in the court for this period that will conclude this year in 2021, I have had the privilege of contributing to dictating sentences, decisions, resolutions, etc. that have expanded the boundaries that encompass human rights in our countries. It was in this challenging twenty-first century that the court introduced for the first time in its sentence<sup>0.133</sup> .irsentury that



women as elected judges and only two of us have been president. It is but a temporary duty in a human rights court as well as a continued fight for women all throughout the continent. This past year in 2020, around the entire world and on this continent in particular, we have suffered the ferocious attack of a pandemic that has hit us hard without mercy and has brutally impacted the fundamental rights of us all. Women, as reported and documented, have been terribly affected by the effects of the pandemic. In the Inter-American Court [of Human Rights], we adopted a declaration on April 9, 2020 that determined a framework for the public policies that states should adopt in order to combat and reduce the effects of the pandemic, while still carefully observing and respecting all peoples' human rights of those living within our countries.

In Vienna in 1993, motivated by the pain of the female victims coming from an atrocious and unnecessary war, like any of the wars around the world, I said that I could never be a judge. Many years later, on a spring night, already in the autumn years of my life, I could tell you that the unknown plans of my destiny allowed me to experience extraordinary moments that have enriched my life, that of loved ones around me, and of my family, all while proudly wearing a judge's robe. I learned over the years that justice is not completely a theoretical ideal and that there is not just one form of justice; I learned that a punitive justice cannot solve the problems faced by the victims, who require a form of restorative justice; I learned that empathy and objectivity are not opposing ideals; I learned that justice within a sentence should always be an instrument of the truth. I have strengthened my values and faith in human rights as well as in women and men who fight every day to make those rights the reality for all.







respect for human rights, for women's rights, makes one consider the indignities mentioned in the Universal Declaration of Human Rights, which translate in the case law and in the work of the ICTY as part of international criminal law. We begin to classify these crimes as war crimes, as crimes against humanity, as weapons of genocide, etc. This allows us to focus on the impact that women suffer, in an armed conflict and in their daily lives, which is different than the effect on men. This is the same thing we are seeing with the pandemic; with what is happening to women in confinement, in the restrictions we are facing, and labor rights that we have achieved all have a different effect [on men]. This perspective of gender is nothing more than a means of analysis for determining how social impacts that happen to all of us in society or in a war have different effects for women and men. That is it. It is not very complicated. It is really a matter of, with analysis and empathy, getting rid of prejudices and stereotypes and using education as a tool in making these changes.

Q: Is there a commitment to cite their legal resolutions mutually as a persuasive authority and thus strengthen the legitimacy of all three [The Inter-American Court of Human Rights, the European Court of Human Rights, and the African Court on Human and Peoples' Rights]?

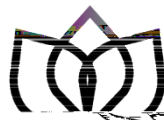
able to go to the meeting in Africa because it was in 2019 but unfortunately this year's meeting in 2021, we were not able to have in person and we had it virtually. So yes, we have this agreement to work together and use the same protocols and we have worked together a lot, well maybe not a lot but I can tell you that a sentence in the European Court would be the same in the African Court and in the Inter-American Court, because we reference the precedent of the other courts. We also cite national case law because our courts are complementary and so it is very important for us to reference and use previous case law. The relationship between the

way. They were referenced in the case *Artavia Murillo et al. ("In Vitro Fertilization") v. Costa*

to museums and exhibitions to see works of art that have survived for centuries—and will continue to survive—helps feed the soul to persist, as well as music and opera.

I am not sure if Patty would like to add anything from these experiences [in The Hague] because they are not just mine. [Patricia Sellers adds her perspective]

Yes, Sara [Sharratt] and I have talked about this as well, about what we are able to achieve throughout our experiences. But what Patty said is absolutely right. Earlier I mentioned Thomas Buergenthal, the youngest survivor of Auschwitz; he arrived at Auschwitz at six years old where he lost his father but thankfully not his mother. Everything that he and other Europeans of the Jewish faith during World War II knew to be their country and their life was the Holocaust. Thomas Buergenthal, who emigrated to the United States and studied International Law of Human Rights, has dedicated—and continues to dedicate—his life to human rights. And finally, he even recently wrote a book about his experiences and his childhood. It shows that traumatic life experiences and events can affect us in a way that makes us give it our all, and we do it.



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