

Amicus Brief on Sexual Violence as Torture in Argentine Case

Earlier this month, the [European Center for Constitutional and Human Rights](#) submitted an Amicus Brief titled Sexual Violence as Torture in several cases stemming from the military dictatorship in Argentina.

In a 1976 coup, the Argentine military seized power and ruled until 1983. During those years, the government violently suppressed dissent. As part of the repression, government officers committed sexual violence against women (and men). These crimes were generally committed in clandestine detention centers as part of a systematic and deliberate plan, orchestrated within the highest government levels. The Amicus Brief argues that these actions are crimes against humanity. From the brief:

This amicus curiae brief is submitted in order to call the Court's attention to the universal acceptance of sexual violence and rape - as a special form of it - as torture when committed by state agents in the context of military repression, when those actions are perpetrated as a part of an orchestrated plan of repression. It is also important to note that an interpretation and application of the crime of torture excluding the gender perspective, and in this case, excluding the sexual violence would be discriminatory and would have a substantially negative impact on international law and international human rights law.

The brief states that in the present case, Argentina has the opportunity to "develop model case law that can assist the international community and other countries undergoing similar historical proceedings, based on the notion of state sponsored sexual violence against women as torture."

The brief notes that international law concerning sexual violence is a relatively recent development: "When the International Criminal Tribunals for Former Yugoslavia and for Rwanda began their work, they encountered a lack of definition of sexual violence under international treaty and customary law and accordingly made great efforts to build a definition in accordance with international standards defining these crimes in such a way that they cover acts which were previously considered lesser offences, sexual assaults or indecent actions under national laws."

The following principles have emerged from international humanitarian law: (1) Sexual violence is not limited to the sexual act of penetration, but could include other behaviors; (2) Rape may be understood as a serious crime of sexual violence; (3) Women as well as men can be victim of these crimes given that the established elements are gender neutral; (4) Coercion should be interpreted broadly, and not only in regard to physical strength, because there may be coercive circumstances in situations of abuse of power or psychological oppression, where it is not necessary to mediate physical strength; and (5) Coercion presumes a lack of consent on the part of the victim, thereby rendering the conduct illegal.

While the ECCHR Amicus Brief has been filed in a criminal case, the principles could be applied to asylum and Convention Against Torture claims, and help to establish that sexual violence is a form of torture.

I have a copy of the brief (English version), but it is not available on-line. Feel free to contact me if you would like a copy.