

# Sojourner for justice

*St. Paul kid turned civil rights lawyer turned international tribunal judge reflects on the war crimes tribunal*

**N**oted jurist and former presiding judge of the War Crimes Tribunal in the former Yugoslavia, Gabrielle Kirk McDonald was once a St. Paul kid, then an idealistic adolescent, then a law student, a civil rights lawyer, a federal district court judge, and in 1993, was nominated as the chief justice in the first war crimes tribunal to be held in over 50 years.

In December, McDonald found herself in Tokyo, presiding over another tribunal, a people's court, called by numerous international non-governmental organizations, whose aim was to restore a sense of justice to the former "comfort women," a group of elderly women from Korea and many other Asian countries who have been silent for 50 years about flagrant violations of their human rights at the hands of the Japanese Army during World War II.

McDonald's name pops up on occasion in reference to the ongoing war crimes investigations by the United Nations in the former Yugoslavia, but for the most part, she keeps a low profile. Nonetheless, in a February 1999 feature story, the *Los Angeles Times* called McDonald "possibly the most powerful African American woman in the world."

McDonald was joined by three other noted human rights jurists in the Women's International War Crimes Tribunal 2000, held December 7-12 in Tokyo. They were: Carmen Argibay, president of the International Women's Association of Judges, Argentina; Christine Chinkin, professor of law, University of London; and Willy Mutunga, president of the Commission on Human Rights and professor at the University of Kenya. Although the Tribunal was not an international court sanctioned by the governments involved as perpetrators and victims, its profile was raised in the international community through the presence of these renowned judges.

Throughout the trial, McDonald's calm and methodical presence lent logic, consistency, and common sense to a proceeding that seemed at times to be fraught with complications and delays due to language and culture differences, particularly with respect to dissimilarities in

court presentation style. McDonald seemed unimpressed by all attorneys' efforts to impress. Where some attorneys played to the 1000-strong audience of the tribunal, McDonald seemed to be concentrating on the future — how to place evidence on the historical record so as to leave no doubt about the accuracy or meaning of each submission. She had no qualms about flustering an attorney who was picking up a head of steam by interrupting with a firm question. When she handed out a compliment to any of the prosecutors, it was on thoroughness of documentation, rather than strength of delivery.

Whether in St. Paul, Belgrade, the Hague or Tokyo, it's all the same when it comes to the search for justice, McDonald believes. The only different thing about the December proceeding in Tokyo on behalf of the former comfort women was its unique standing as a "people's court," she said. "The Nuremberg Trials and Tokyo Tribunal were the first international criminal trials.

Actually they weren't truly international. The Nuremberg Trials were decided on by a multinational agreement, and the Tokyo Tribunal was ordered by General MacArthur. But at least they were an attempt by the international community to hold individuals responsible," she said.

The precedent of trying individuals for war crimes has been set by those two tribunals, she said. "Both of them had jurisdiction to try individuals for war crimes and crimes against humanity. That was a very important thing, because before that, treaties were considered to prescribe certain behavior but were not enforced. So what you have when treaties are not enforced is international hypocrisy...you create a certain standard of behavior, and you say this behavior is unlawful even in times of war, and yet it goes unpunished." The Nuremberg and Tokyo Tribunals lent legitimacy to multinational agreements by enforcing mutually agreed-upon international norms that govern behavior even during times of war. The December 2000 Women's International War Crimes Tribunal was an extension of this precedent.

McDonald, however, calls it "unconscionable" that the victimization of the comfort women at



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the hands of the Japanese military was ignored in the International Criminal Tribunal for the Far East (Tokyo Tribunal) of 1946. "How do you conduct a tribunal that is supposed to consider crimes conducted during a war and there is no mention of 200,000 women who were coerced or intimidated into these comfort stations, and once they arrived at the comfort stations, ... were subjected to inhumane treatment."

Why a "people's court?" McDonald explained that a statute agreed upon in 1997 by 120 countries to establish a permanent international criminal court would be in effect only for crimes committed in future conflicts. The U.N. Security Council, through its charter, can convene war crimes tribunals, but will only do so if the unresolved crimes create a threat to international security, McDonald explained. Crimes committed 50 or more years ago are unlikely to be a threat to security, so are not appropriate for the Security Council. The possibility of filing suit through conventional means in Japan has also been explored. Numerous court challenges filed by defendants from Korea and the Philippines have been dismissed because they were "time-

barred," that is, the Japanese government has claimed that the statute of limitations ran out. The Japanese government has also alternatively claimed that treaties executed after the 1946 Tribunal took care of any and all claims of war crimes. No apology has been issued by the Japanese government so far.

On the day before the Tribunal began, a Japanese court took 15 seconds to dismiss a case by 80 Filipina former comfort women who demanded an apology and \$9 million. The case was dismissed on the basis of expired statute of limitations, according to Indai

Sajor, whose organization, the Asian Centre for Women's Human Rights (ASCENT) helped bring the suit on behalf of the women. The case took nine years to develop, Sajor said in a December 6 press conference.

McDonald explained that there is a movement to raise issues of sexual violence committed during wartime, and that the trials in the former Yugoslavia have successfully prosecuted such charges. There have been lawsuits filed and they have been unsuccessful. There have been some small scale commissions, and those reports were submitted (to the U.N.) Still the position of the government of Japan has been that it is not legally liable, she said.

The organizers decided to take advantage of this recent movement toward enforcing humanitarian law, she said. "Because not only do you get evidence, (which allows) the judges to develop a historical record regarding comfort women, but because we're operating in a legal structure, they will interpret and apply law, particularly law as it relates to gender-based crimes. And that will assist in the overall movement for gender-based crimes to be given an attention, as well as

addressing the issue of the comfort women themselves. That was the basis for their choosing the tribunal approach."

The Tribunal had approximately 50 sponsoring organizations worldwide, including several prominent U.S. groups such as Amnesty International, the Women's Caucus for Gender Justice, and Human Rights Watch.

The judges needed to look at the law as it existed in 1946, and sexual violence was named as a war crime at the time, even though it was not prosecuted, she said. The prosecutors successfully did so, and a guilty verdict was issued December 12 against Emperor Hirohito and unnamed individuals in the upper echelon of the contemporaneous Japanese Imperial government and military.

The search for justice is universal, crossing all cultural boundaries, and her judgeship of the Women's Tribunal is proof of that — it is just another extension of what she has always done, said McDonald, who has Swedish American and African American forebears. "I'm not Asian, and I don't have any Asian roots, but I went to law school because I wanted to be a civil rights lawyer. ...I applied to one law school, that was Howard. I wanted to work do one thing. That was to work for the NAACP. I traveled the south and did that. Here, now I find myself in Tokyo, but still when I watch these women come in I looked at them and I think of my grandmother, because my grandmother was a very strong, courageous woman. I said to myself ...How would she feel if she had experienced this? ...I want to use my tools to make sure they get their justice. And it doesn't make any difference whether I am Korean or American or African American. Some of us believe that everyone is entitled to justice. That's what draws some Americans to efforts like this.

"This story needs to be taken to the United States, and I'm glad you're taking it there," she said. "This is not just an Asian story. This is a world problem and we all have a stake in it. We all have a stake in restoring dignity to people, and all have a stake in making sure that the truth comes out." ●