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Judge Rules Rape of Aboriginal Girl 'Traditional'

By Sonia Shah

In North Queensland, Australia, a state judge defended an Aboriginal man's right to forcible intercourse with an underage girl as a 40,000-year-old custom.

The judge ruled in October that a 15-year-old Aboriginal girl "knew what was expected of her" and "didn't need protection" when a 50-year-old man (previously convicted of slaughtering his former wife) raped her and shot a gun into the air when she complained. An anthropologist testified that the man's arrangement with the girl was "traditional" and therefore "morally correct."

At birth, the girl's parents had promised her as a wife to the man, in return for a portion of his fortnightly government allowance. The girl resisted his advances, so he beat and raped her.

Government-sponsored legal aid lawyers defended the man, who got a nominal 24-hour sentence on appeal. The judge explained that the man's conduct was "Aboriginal custom" and part of his culture.

Aboriginal feminists and anthropologists disagree. They say the real issue is how "tradition" has been distorted to mask the abuses of both indigenous men and the white-dominated legal system.

Aboriginal women and children are 45 times more likely to be victims of domestic violence than non-Aboriginals, and eight times more likely to be murdered. As allegations of serial and gang rape swirl around the commissioner of the nation's top Aboriginal government agency, the epidemic of violence against Aboriginal women has emerged as a national crisis.

"We will, in the end, have destroyed ourselves if we do not put a stop to family violence now," said indigenous leader Jackie Huggins at a recent conference on domestic violence.

Under the traditional community justice system, women act as law-keepers and men as law-enforcers, and all are enjoined to protect the young. But today, many Aboriginal people "feel powerless to intervene in their own communities," says Aboriginal professor Judy Atkinson. Also, "there is enormous pressure on women and children not to report to the authorities," says Dr. Harry Blagg, an expert on Aboriginals and the criminal justice system.

The government's legal-aid services to Aboriginals protect defendants, not victims, thus producing "a body of case law with a rather spurious understanding all skewed toward men's perspectives," adds anthropologist Diane Bell.

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