

Mrs Kristalina Georgieva
Member of the European Commission
International Cooperation Humanitarian Aid and Crisis Response
B-1049 Brussels
Belgium

August 14, 2012

Re: EU humanitarian aid for women raped in armed conflict must respect their rights to non-discriminatory medical care under International Humanitarian Law

Dear Commissioner Georgieva,

We are writing on a matter of global urgency: the near universal denial of abortions for women and girls raped in armed conflicts in EU funded humanitarian medical settings. Women impregnated by war rape have non-derogable rights to non-discriminatory medical care, including abortions, under international humanitarian law (IHL). We have taken note of your response of July 17, 2012 to the Parliamentary Questions submitted on May 30, 2012 with regard to abortions for women raped in conflict and US abortion restrictions on humanitarian aid. While we appreciate your prompt response, we find the answer to be non-responsive to the questions posed by the parliamentarians and request clarification on the following points:

First, the Commission's response to parliamentary questions of May 30, 2012 cites to the *Minimum Initial Service Package of Reproductive Health in Crises* (MISP) as defining the standard of care provided to rape victims in humanitarian settings. The MISP, while an important tool for humanitarian aid providers, is written to be applicable to *all* humanitarian crises and accordingly, fails to recognize the special enhanced rights to medical care under IHL for "wounded and sick" in armed conflict. Furthermore, the MISP, while requiring certain reproductive health services, including clean birthing kits and emergency contraception, defers to local abortion laws to define the availability of abortion services.

By deferring to local laws, the MISP fails to recognize that girls and women impregnated by war rape, as persons "wounded and sick" in conflict, have specially protected rights to non-discriminatory medical care, including the termination of pregnancy under the Geneva Conventions and its Additional Protocols. These protections under IHL cannot be relegated to domestic laws, including local abortion laws. These protections are reinforced by the provisions in Additional Protocols to the Conventions, which are binding on all EU Member States, and provide that doctors treating the "wounded and sick" in armed conflict are immune from prosecution under national laws for the services they provide.¹

¹ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, art. 10 (2), Jun. 8, 1977, 1125 U.N.T.S. 302 (hereinafter AP I) and Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, art. 7(2), Jun. 8, 1977, 1125 U.N.T.S. 609 (hereinafter AP I).

Accordingly, we urge the Commission to comply with the EU Guidelines on promoting compliance with international humanitarian law,² which requires EU bodies to distinguish situations involving armed conflict from other humanitarian disasters, in order to know when the special rules of IHL apply. By differing to the MISF, this is currently not being done by the Commission with regard to women raped in war.

Second, the response to the parliamentary questions states that EU funding is “not subject to any restrictions unilaterally imposed by other donors.” While this may be true in theory, this is not true in practice. In fact, it is likely that all EU humanitarian aid funding for the medical care of women war victims, with the exception of funding to Médecins Sans Frontières (who do not accept United States (US) funding), is directly or indirectly compromised by the “no abortion” prohibition put on all US humanitarian aid, which prohibits all humanitarian entities funded by the US from *speaking about abortion or providing abortion services, even a life-saving abortion for a girl raped in conflict.*

EU funding is infected by the US abortion ban in two ways. First, EU and US humanitarian aid is given largely to the same major organizations operating globally and since they do not segregate out US funds, the abortion ban is applied to the entire operation. Second, in conflict areas there are a limited number of local health or social services organizations and they tend to be sub-grantees of entities funded by both the EU and US. The Commission categorizes its humanitarian partners into three categories; here are examples of how US funds affect EU funding in each:

1. The International Committee of the Red Cross (ICRC)

Funding to the ICRC by the EU Member States and the Commission is provided with the recognition that such funding helps Member States fulfill some of their obligations to “respect and ensure respect” for the Geneva Conventions under common Article 1.³ In 2011 the Commission and EU member states together provided 47% of the ICRC’s total budget. By contrast, the US provided 21.08%⁴, all of which is conditioned on US abortion restrictions. Since the ICRC does not segregate its US funds from that of other donors, the ban applies to its entire operations. This is particularly problematic because the ICRC is considered “the guardian and promoter of humanitarian law” and has the mandate to protect victims of international and internal armed conflicts – which has been specially recognized by the EU.⁵

The ICRC operational guidelines for treating rape victims in armed conflict mandate medical staff to “strictly comply” with local abortion laws, implicitly making restrictive domestic abortion laws compatible with the medical mandates of IHL, even if the law has no life exception. By contrast the ICRC’s professional guidelines are explicit that ICRC medical workers should follow local law *only* if

² European Union Guidelines on Promoting Compliance with International Humanitarian Law (IHL), para. 15, 2005/C 327/04 (Dec. 12, 2005).

³ Urgence Réhabilitation Développement, *An Evaluation of the Partnership with DG ECHO and the International Committee of the Red Cross (ICRC) and of ICRC’s Activities funded by DG Echo*, pg. 23 (Oct. 22, 2006).

⁴ ICRC, Financial Overview, Annual Report, available at: <http://www.icrc.org/eng/assets/files/annual-report/current/icrc-annual-report-financial-overview.pdf>.

⁵ European Commission, Humanitarian Aid Decision 23 01 01, *Support to humanitarian operations providing protection to victims of armed conflicts and other situations of violence through the International Committee of the Red Cross (ICRC) in the Republic of Congo, Rwanda and Sierra Leone*, ECHO/THM/BUD/2006/06000, provides, as a part of the rationale for funding the ICRC, that “As a neutral and independent organization, the ICRC seeks to ensure that all the parties to a conflict provide individuals and groups with the full protection that is due to them under the Geneva Conventions and their Additional Protocols, as well as other applicable IHL.”

such laws “reinforce(s) overall protection, and are in conformity with international law,” adding the caveat that, “[p]rotection actors must be aware that international law and standards cannot be lowered and must be respected and upheld.”⁶ By refusing to consider abortion as necessary medical treatment for impregnated war victims, in places like the Democratic Republic of Congo (DRC) or Sudan, the ICRC legitimates forced pregnancy, forced childbearing, and recourse to unsafe abortions or suicide as acceptable outcomes for women victims of war rape.

2. The United Nations Population Fund (UNFPA)

UNFPA is the lead agency implementing a “multi-sectoral response” for survivors of sexual violence in the DRC⁷ as well as in Darfur, Sudan. EU Member States provide over two thirds of UNFPA’s core funding, and the European Commission has been UNFPA’s biggest co-financing contributor for two consecutive years.⁸ The EU alone gave UNFPA \$40,526,495 in 2011.⁹ The US imposes not one, but two, abortion-related restrictions on UNFPA – not only must UNFPA agree to the “no abortion” ban on US funds, but UNFPA cannot perform a single abortion, even with funds from other donors, such as ECHO, or it will be defunded by the US entirely.¹⁰

3. Cooperazione Internazionale (COOPI)

In 2010, the European Commission made two humanitarian aid grants to COOPI for work in the DRC for victims of sexual violence totaling 2,138,000€. ¹¹ In a 2008 multiyear agreement USAID also funded COOPI for support for “Survivors of Sexual and Gender-based Violence” including to work with local medical facilities to provide care to female rape victims.¹² COOPI’s contract with USAID, which the Global Justice Center obtained through a Freedom of Information Act Request, prohibits COOPI from even discussing abortion in the context of legal rights of war victims and forbids it or its sub-grantees/partners from providing any victim of war rape with an abortion, even to save her life. COOPI does not segregate out its US funding from its Commission funding.

The EU community is laudably the largest provider of humanitarian aid in the world. For that reason, it is imperative that the EU take the lead to ensure that girls and women raped in war are accorded their full rights under the Geneva Conventions and IHL, including when needed, abortions in humanitarian aid settings. We recommend the following first steps:

1. Amend the Framework Partnership agreement to require that EU partners providing assistance for war victims ensure that women impregnated by war rape are provided with the option of abortion as part of comprehensive medical care.

⁶ ICRC, Professional Standards for Protection Work: Carried Out by Humanitarian and Human Rights Actors in Armed Conflict and Other Situations of Violence at 41 (Oct. 2009) (“pending such changes [to bring national law into conformity with international law] protection actors should nevertheless be prepared to point out that domestic law cannot be used as an excuse for non-compliance with international obligations”).

⁷ UN Action Against Sexual Violence in Conflict, Comprehensive Strategy on Combating Sexual Violence in DRC, Executive Summary can be found at: “Comprehensive Strategy on Combating Sexual Violence in DRC <http://stoprapenow.org/uploads/features/ComprehensiveStrategyExecSumm.pdf>.

⁸ The European Union and the UNFPA, available at: http://www.unfpa.org/eu_partnership/.

⁹ UNFPA Annual Report 2011, pg. 37 (2012), available at:

http://www.unfpa.org/webdav/site/global/shared/documents/publications/2012/16434%20UNFPA%20AR_FINAL_Ev11.pdf.

¹⁰ Consolidated Appropriations Act 2010, §7078(d) (2), P.L. 111-117 (Dec. 16, 2009).

¹¹ Commitment position key: SI2.565855.1 *I Financial Transparency System*, European Commission, available at: http://ec.europa.eu/beneficiaries/fts/index_en.htm.

¹² “Cooperative Agreement Contract between USAID and Cooperazione Internazionale, Dec. 15, 2008, obtained through FOIA, at 1. available at: <http://globaljusticecenter.net/FOIACOOPI2008.pdf>.

2. Take steps to insure segregation of EU funds from US funds in accord with paragraph 61(1) of the EU Resolution of March 13, 2012 on Equality between men and women in the European Union.
3. Set up a special review committee with EU member states representatives to consider the legality of the ICRC anti-abortion policy under the Geneva Conventions and its Additional Protocols.
4. Fully answer the Parliamentary Questions submitted by MEPs on May 30, 2012 with respect to the denial of abortions for women raped in armed conflict.

Please do not hesitate to contact us if you require any further information. We plan to provide you, under separate cover, with more detailed information regarding obligations under international law and EU regulations to ensure that humanitarian aid provided by the EU complies with IHL.

Sincerely,



Janet Benshoof
President
Global Justice Center

Cc:

Mr. Martin Schulz, President of the European Parliament
Mr. Edward McMillan-Scott, MEP, Vice-President of the European Parliament
Mr. Alexander Alvaro, MEP, Vice-President of the European Parliament
Ms. Sophie in't Veld, MEP
Ms. Antonia Parvanova MEP
Ms. Renate Weber, MEP
Ms. Sarah Ludford, MEP
Mr. Jean Lambert, MEP
Ms. Véronique Mathieu, MEP
Ms. Sirpa Pietikäinen, MEP
Mr. Nobert Neuser, MEP
Ms. Françoise Castex, MEP
Mr. Charles Goerens, MEP