



April 28, 2011

Ms. Margot Wallström  
Special Representative of the Secretary-General on Sexual Violence in Conflict  
Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict  
866 United Nations Plaza (48<sup>th</sup> Street)  
Alcoa Bldg. Room A-328  
New York, NY 10017

By E-Mail and USPS

**RE: Implementation Guidelines on Security Council Resolution 1960 and International Humanitarian Law**

Dear Ms. Wallström,

As President of the Global Justice Center (GJC), and a member of the NGOWG on Women, Peace and Security, I want to express my appreciation for your outspokenness on behalf of women victims of sexual violence in armed conflict and for your outreach to civil society groups.

Indeed, the very establishment of your office presents a historic opportunity for a paradigm shift in women's status under the laws of war.

Helga Pedersen, Deputy Leader of the Norwegian Labour Party, and I met with you last October, regarding the need for UN initiatives on violence against women in armed conflict to address "overlooked," but systemic violations of women's rights under international humanitarian law (IHL). In a spirit of partnership with your mission, we urge that the guidelines for implementing SCR 1960 address this situation by fully incorporating the IHL rights of women discussed herein.

The mission of the GJC is to advance gender equality through the aggressive enforcement of human rights and humanitarian laws, including Security Council resolutions. SCR 1960 and the "mutually reaffirming" resolutions (1352, 1612, 1820, 1882, 1888, 1889 and 1894) cited therein. These resolutions reflect a seismic shift in the Security Council over last fifteen years making "(e) nsur[ing] respect" for IHL central to the Council's mandate to maintain international peace and security.

However, we are concerned that the underlying purpose of these resolutions, ensuring women's rights under IHL, has been undermined by complex UN implementation guidelines. The singling out of indicators, and the establishment of multilayered reporting and monitoring schemes, while well intended, result in systems being put in place that accord women victims of armed conflict fewer rights than they already have (on paper at least) "protected persons" under IHL. For example, requiring the reporting and monitoring of crimes against women in armed conflicts, without addressing the failure to classify rape as a weapon as required under IHL, perpetuates discrimination against women.

For these reasons, it is critical that the fundamental rights of girls and women be explicitly referenced in SCR 1960 guidelines including: the right to reparations, the right to accountability, including by an ICC referral during or, after conflict; the right of victims impregnated by war rape to abortions under the Geneva and Genocide Conventions; and, the right of women, indeed, all victims of war rape, to have the use of rape in armed conflict categorized as use of an illegal weapon under humanitarian law (IHL). Finally, SCR 1960 must be implemented in a nondiscriminatory manner. Obligations to act under IHL exist regardless of the state perpetrating the war crimes. UN priorities must be based on the degree of criminality, impunity, and the suffering of women. Women targeted for such war crimes as genocidal rapes cannot be ignored because UN bodies do not have a presence in their states. Women in Burma have the same rights to have IHL “respected” as women in DRC or Libya.

**1. Implementation of SCR 1960 must advance not obscure, underlying IHL mandates.**

The language of SCR 1960, given the need for political consensus, understandably, focuses on the obligations of state parties in conflict, non state parties, and “perpetrators.” However, SCR 1960 guidelines cannot be so limited. SCR 1960 does not, nor could it alter, the secondary non-derogable obligations of all states and the UN to take “all measures possible” in response to gross breaches of IHL by a violator state. This duty is reflected in SCR 1674 which requires “all parties concerned comply strictly with the obligations applicable to them under international law; in particular those contained in ...the Geneva Conventions of 1949 and their Additional Protocols of 1977, as well as with the decisions of the Security Council.”<sup>1</sup>

IHL and the customary laws of state responsibility together form the framework for the non-derogable “secondary obligations” of all states (and the UN) triggered by use of rape as a weapon in armed conflict.<sup>2</sup> These include (1) bilateral sanctions against states employing sexual violence during conflict; (2) steps towards ensuring collective action by the UN and the Security Council; (3) the exercise of universal jurisdiction over perpetrators on a states territory; (4) reparations by a violator state; (5) where sexual violence is inflicted with impunity, the situation should be referred to the ICC; and (6) where the state in conflict has not ratified the Rome Statute, all states should take all measures possible to ensure that the Security Council refers the situation to the ICC.

Security Council resolutions impose additional affirmative obligations on states and the UN, including on the Security Council itself. Given that the Security Council is the ultimate enforcer of SC resolutions, and the only entity with the power to address criminal violations of IHL, your office cannot be limited to acting through the Secretary General. There must be an expeditious and direct pipeline established whereby the Security Council can be called upon to act when situations of violence against women in conflict arise to the level of a “threat to peace and security.”

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<sup>1</sup> SCR 1674 (2006): *The Security Council...* 6. *Demands* that all parties concerned comply strictly with the obligations applicable to them under international law, in particular those contained in The Hague Conventions of 1899 and 1907 and in the Geneva Conventions of 1949 and their Additional Protocols of 1977, as well as with the decisions of the Security Council.

<sup>2</sup> The Right to an Abortion for Girls and Women Raped in Conflict, the Global Justice Center, January 2011.

**2. Special efforts must be undertaken to ensure that sexual violence against women in “neglected” or “forgotten” conflicts are placed on the Security Council agenda.**

SCRs 1960, 1325, 1820, 1887, 1888 and 1889 are designed to put women victims of sexual violence in armed conflicts squarely in the center of IHL enforcement. Yet, geography continues to be the major determinant of whether the global community will take action to end impunity of the military for rapes and other forms of sexual violence. Although U.N. entities are increasingly involved in monitoring violence against women in armed conflict, their focus remains on women victims in those states where a U.N. agency has a in country team or other access. Ironically, crimes against women, including genocidal rapes in countries like Burma, which call for the strongest international actions to end impunity, receive the least implementation attention.

We urge that your office take a leadership role in proposing creative new solutions to ensure and end impunity for perpetrators of gross crimes wherever the perpetrators or victims reside—including countries such as Burma, Libya, North Korea, Guinea and Iran.

**3. Girls and women impregnated by rape in armed conflict are entitled to abortions under the non-discrimination mandates of the Geneva Conventions, its Additional Protocols and customary international law.**

SCR 1960 reaffirms “the importance for States, with the support of the international community, to increase access to health care...for victims of sexual violence.” The provision of such medical services is governed by the Geneva Conventions, the Additional Protocols, and customary international law, all which guarantee that the “wounded, sick and shipwrecked,” which include women victims of rape,

“... be treated humanely and shall receive to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. There shall be no distinction among them founded on any grounds other than medical ones.”<sup>3</sup>

This duty to provide non-discriminatory aid applies both to state parties to the conflict and, to any donor states or the UN who provide such humanitarian aid.<sup>4</sup>

Despite these nontransgressible protections enshrined in IHL, thousands of girls and women, impregnated by rape in armed conflict are routinely denied life saving abortions in places like the Democratic Republic of Congo, Burma and Sudan. Girls and women die from attempts to self-abort, suicide and complications of continued forced pregnancy and childbirth. Further, as one human rights report on Sudan (where abortion for rape is legal) found: “the question of access to

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<sup>3</sup> Additional Protocol I, art 10 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, Jun. 8 1997, 1125 U.N.T.S. 609.

<sup>4</sup> International Committee of the Red Cross, Protection of victims of armed conflict through respect of International Humanitarian Law at 4, Reference Document – 27<sup>th</sup> International Conference of the Red Cross and Red Crescent, Geneva Oct. 31 – Nov. 6, 1999.

safe abortion as an option for victims of rape is not openly discussed in any health facility receiving international humanitarian assistance in Darfur, Chad or elsewhere.<sup>5</sup>

Forcing continued pregnancy and unwanted childbirth on girls and women impregnated by war rape is deadly, discriminatory, and constitutes cruel & inhumane treatment. The current, near universal practice of denying abortions to women impregnated by war rape was not always the case. For example, in 1971, 200,000 – 300,000 women were raped in Bangladesh by the Pakistani army and their agents. Approximately 25,000 children were born of these rapes and the suffering of families continues to this day. However, unlike any country today, Bangladesh in 1971 sought help from the U.N. and others to ensure that the victims had access to abortions. International Planned Parenthood Federation (IPPF) London set up 10 mobile abortion clinics in conflict areas in Bangladesh in 1971 to provide abortions for impregnated victims who sought them.<sup>6</sup> Forty years later, in 2011, abortion is not even discussed in any of the twenty-two states to be deemed in armed conflict<sup>7</sup> including the DRC, Burma, and Sudan.<sup>8</sup>

#### **4. States' failure to classify rape as a weapon used in armed conflict discriminates against rape victims under IHL.**

SCR 1820 explicitly recognizes that rape is being used as a tactic or weapon of war. However, no state classifies rape as a “real” weapon. Doing so would trigger the full scope of IHL which can be brought to bear against states using prohibited means of warfare. For example, current weapons injury assessment procedures exclude rape of women. Thus no information on the severity of different type of rape wounds or on deaths due to rape are being tracked in vital war injury databases such as those used by the ICRC, including the Sirius Project, and by NATO. Classifying a rape as a weapon would require that “well equipped” military field hospitals comprehensively treat all the injuries inflicted by the use of rape as a weapon, including abortions. Other outcomes from such a classification include:

- a. Once rape is classified as a prohibited weapon, its use can become a separate war crime under the ICC statute<sup>9</sup>. Perpetrators of rapes in armed conflict could be charged with two counts of war crimes for the same act – the war crime of rape and the war crime of the illegal use of a weapon, increasing the chances for successful prosecution and accountability. Establishing command responsibility for use of an illegal weapon i.e. rape can be easier to prove than the individual crime of rape.
- b. Classifying the use of rape as an illegal weapon would mean that use of such a weapon would invoke obligations of cessation and reparations by the violator state, as well as

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<sup>5</sup> Tamara Fetters, Abortion Care Needs in Darfur and Chad, Forced Migration Review 25, May 3, 2006 (citing HRW Report Darfur and Chad).

<sup>6</sup> Susan Brownmiller, *Against our Will: Men, Women and Rape*, 1975; The Bryan Times, February 10, 1972 Abortion Team to travel to Bangladesh.

<sup>7</sup> Centre for the Study of Civil War (CSCW) at the International Peace Research Institute, Oslo (PRIO) and Uppsala Conflict Data Program (UCDP) available at <http://www.prio.no/CSCW/Datasets/Armed-Conflict/UCDP-PRIO/Armed-Conflicts-Version-X-2009/>.

<sup>8</sup> The Right to an Abortion for Girls and Women Raped in Conflict, The Global Justice Center, January 2011 cites Tamara Fetters, Abortion Care Needs in Darfur and Chad, Forced Migration Review 25, May 3, 2006.

<sup>9</sup> Under Article 8 of the Rome Statute.



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obligations on all states to bring about an end to the violation of an international obligation by the responsible state.

- c. Under the UN Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Humanitarian Law, a

“State shall provide reparation to victims for acts or missions which can be attributed to the state and constitute gross violations of international human rights law or serious violations of international humanitarian law.”<sup>10</sup>

Classifying the use of rape as an illegal weapon would provide victims of sexual violence in armed conflict with an avenue to seek reparations without having to first establish individual criminal accountability for rape via local prosecutions. In a country like the DRC where rape is used as a “weapon of war” against thousands of civilians and very few prosecutions have actually taken place, this could assist in obtaining redress for these victims. Accordingly, this definition of rape as an illegal weapon would be a more direct avenue for victims to seek redress for the crimes they suffered.

As Special Representative of the Secretary-General (SRSG) on Sexual Violence, you hold a special position as the point person for the global community, and, in particular, the Security Council. We respectfully request that the SCR 1960 guidelines being developed reflect the full scope of women’s rights under IHL and thereby set the global standard for women’s rights under the laws of war.

Thank you for your attention to this matter. I would be happy to meet with you or provide any further information to assist your office.

Sincerely yours,

Janet Benshoof  
President  
Global Justice Center

CC:

Navanethem Pillay, United Nations High Commissioner for Human Rights  
Elizabeth Rehn, Minister of State, Finland; Chair of the Board of Directors of the Trust Fund for Victims, ICC  
Helga Pedersen, Deputy Leader, Norwegian Labour Party  
Patricia O’Brien, Under-Secretary-General for Legal Affairs and United Nations Legal Counsel

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<sup>10</sup> Basic Principles and Guidelines on Right to a Remedy and Reparation for Gross Violations, G.A. Res 60/147, U.N. Doc A/60/147 (Dec. 16, 2005).