

United Nations Security Council Resolution 1820

A Preliminary
Assessment of
the Challenges and
Opportunities



International Women's Tribune Centre



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United Nations Security Council Resolution 1820

A Preliminary Assessment of the Challenges and Opportunities

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ACRONYMS

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
DPKO	Department of Peacekeeping Operations
DRC	Democratic Republic of the Congo
UN ECOSOC	United Nations Economic and Social Council
ICC	International Criminal Court
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IDP	Internally displaced person
INHURED	International Institute for Human Rights, Environment and Development, Nepal
IWTC	International Women's Tribune Centre
MARWOPNET	Mano River Women's Peace Network
MGD	Minister of Gender and Development, Liberia
MONUC	United Nations Mission in the Democratic Republic of Congo
NGO	Non-governmental organization
NGOWG	NGO Working Group on Women, Peace and Security
OCHA	Office of Coordination of Humanitarian Affairs
OHCHR	Office of the High Commissioner for Human Rights
SRSG	Special Representative of the Secretary-General
TRC	Truth and Reconciliation Commission
UN	United Nations
UNDP	United Nations Development Programme
UNIFEM	United Nations Development Fund for Women
UNMIL	United Nations Mission in Liberia
UNSCR	United Nations Security Council Resolution
WIPNET	Women in Peacebuilding Network, Liberia
WONGOSOL	Women NGOs Secretariat of Liberia

1: INTRODUCTION AND BACKGROUND

The purpose of this paper

United Nations Security Council resolution (UNSCR) 1820 on widespread sexual violence in conflict was adopted in June 2008, reinforcing and expanding on UNSCR 1325 (2000), which called for the participation of women at all levels of decision-making in conflict resolution and peacebuilding. Just over a year later, in July 2009, the UN Secretary-General released his first report on UNSCR 1820, and NGOs and other actors are increasingly focusing on how the resolution can be used to help end sexual violence in conflict and to advance the broader women, peace and security agenda.

As part of this process, the International Women's Tribune Centre (IWTC) will host a strategy session in September 2009 with participants from non-governmental organizations (NGOs) around the world to analyse the Secretary-General's report and the official positions of member States, UN entities and other actors. The session aims to stimulate discussion on how NGOs in conflict-affected communities can best use UNSCR 1820 to formulate a more effective response to counter sexual violence and impunity. It will include women's peace advocacy groups from Burundi, Canada, the Democratic Republic of the Congo, Ghana, Liberia, Nepal, the Netherlands, Sierra Leone and Timor-Leste, the majority of whom are members of the Women Peace Builders' Community of Practice, a global linking and sharing network of women peace activists coordinated by IWTC.

This paper is intended to serve as a primary resource for this strategy session by offering a preliminary assessment of the opportunities and challenges for implementing UNSCR 1820. It begins by describing the development of the resolution, identifies actors who have roles in its implementation, links this resolution to other relevant aspects of international law, and analyses its strengths and limitations. It then features case studies of Liberia and Nepal that examine the hopes and challenges for implementing UNSCR 1820 in these conflict-affected countries. Finally, it highlights critical issues raised by practitioners in the field and offers a preliminary set of recommendations on how actors can engage in the implementation of UNSCR 1820 at various levels to prevent sexual violence and end impunity. An appendix offers a collection of resources on international legal instruments and international criminal jurisprudence on rape and sexual violence.

The widespread nature of sexual violence in conflict

Resolution 1820 came about at a time of renewed focus on sexual violence in conflict, due in part to significant international media coverage of the situation of women in the Democratic Republic of the Congo (DRC). Hundreds of thousands of Congolese women have been subjected to sexual violence, an estimated 40 rapes occur every day in one province alone, and 60 per cent of combatants are believed to be HIV-positive (Goodwin, 2004). Armed actors have targeted women and girls in the streets, fields and homes and may also force them into sexual slavery or prostitution (UN Action, n.d). However, while the stories from the DRC conflict are horrifying, it remains only one of many situations where women have faced the daily threats and consequences of widespread conflict-related sexual violence.

For example, during the 1994 Rwandan genocide, up to 500,000 women were raped as a tactic of war, many by HIV-infected rape gangs. In 1993, the UN declared that rape was used as a weapon of the Serbs in Bosnia against Muslim women (New York Times, 1993), with estimates of the number of victims ranging from 20,000 to 50,000 (BBC, 2000); another 20,000 women were raped in Kosovo (Smith, 2000). In Sierra Leone, Amnesty International (n.d) estimates that up to 250,000 women and girls (33 per cent

of the female population) were victims of sexual violence, much of it systematic, during the conflict.

Despite increased awareness of the widespread nature of sexual violence, only recently – mainly through the jurisprudence from the international criminal tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR) – has there been heightened recognition that this is not something that “just happens” in the turmoil of war but that it is being used as a specific tool of war to achieve military or political ends. These two ad-hoc tribunals, which were created to try crimes for specific conflicts and time periods, highlighted the need for a permanent and independent court, leading to the adoption on 17 July 1998 of the Rome Statute, signed by 120 States, and the establishment of the International Criminal Court. The Rome Statute includes articles under which sexual violence can be a war crime, crime against humanity and/or act of genocide (see Section 3 for definitions).

Prohibition on rape in international law actually predates the international criminal tribunals and the Rome Statute. Geneva Convention IV of 1949 explicitly states that “women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault”.¹ However, inadequate definitions, the absence of implementing mechanisms and an overall lack of accountability have hampered the effective use of these provisions.

In contemporary conflicts, in which armed non-state actors vie for power in poverty-stricken countries and communities, this impunity has translated into the use of rape as a cheap and effective means of terrorizing target populations to help actors achieve political ends. Post-conflict, perpetrators also include members of the community, ex-combatants and family members who take advantage of the impunity and an embedded culture of violence.

With sexual crimes resulting in unwanted pregnancies, sexually transmitted diseases (including HIV and AIDS) and physical and psychological scars, these traumas can have long-lasting and devastating effects on women and their communities in both social and economic terms. They can also have a direct impact on the ability of women to participate in meaningful ways in public life, including in resolving conflicts and rebuilding war-torn communities, particularly in situations where sexual violence becomes normalized in the aftermath of conflict.

The development of resolution 1820

The development of UNSCR 1820 began as early as 2005, at which time there were diverging views on the utility of a resolution on sexual violence. The Permanent Mission of the United Kingdom to the UN was probably the first mission to begin considering how to continue to advance the women, peace and security agenda, perceiving critical weaknesses in the language of resolution 1325. With the inputs of women’s rights activists, the Mission concluded that a more actionable resolution was needed, one that would specifically address the types of gross human rights violations that were increasingly being reported in conflict-affected countries.

Although the UK Government supported this agenda, the Mission faced resistance from a small group of NGOs who expressed concern that such a resolution could revert the discourse on women in UN resolutions to the status of victims, terminology that had strongly characterized references to women prior to UNSCR 1325. They worried that it could undermine calls for women’s participation, which had continued to be vastly outnumbered by calls for protection in the eight years since the adoption of resolution 1325 (Black, 2009). There was also concern about the fact that UNSCR 1325 had yet to be fully implemented and another resolution might take away attention from this.

In October 2007, Ghana held the Presidency of the Security Council and expressed interest in using this

¹ Geneva Convention IV, Art. 27., 12 August 1949.

opportunity to develop a Presidential Statement calling for a working group on women, peace and security (True-Frost, 2007a), as recommended in the Secretary-General's report to the Council on this issue in September 2007. While most of the wording calling for a working group was eventually dropped from the final statement, the debate that arose, coupled with other on-going advocacy, helped to pave the way for the future development of resolution 1820.

Soon afterwards, the UK and the United Nations Development Fund for Women (UNIFEM) began collaborating on a conference to be held at Wilton Park, UK in late May 2008 to refine the understanding of what role UN peacekeepers could play in preventing and responding to conflict-related sexual violence. Conference participants included representatives from permanent missions to the UN, country-level ministers, military personnel, policy makers, NGO experts from conflict zones and other practitioners with insight into the challenges of tackling sexual violence.

Drawing on the experiences of in-field experts such as Major General Patrick Cammaert, former Deputy Forces Commander for the UN Mission in the DRC (MONUC), attendees exchanged stories on good practices and on critical barriers to implementation. Cammaert described how some peacekeeping units under his command had successfully stemmed attacks in certain areas through tactics such as strengthened grassroots intelligence, profiling populations at risk, observing patterns of when and where violations were mostly likely to occur (such as when women collected water or firewood) and designing patrol schedules accordingly. They also employed simple, non-intervention strategies such as increasing patrols in high-risk areas and/or using flashlights or flashing headlights to signal their presence to potential perpetrators. However, they identified critical gaps in the ability of all units to implement such tactics, including lack of political will and lack of adequate equipment such as flashlights, raincoats and rubber boots for foot patrols at night or in the rain.

Although organizers did not specifically intend

Box 1: NGOs and UNSCR 1325

For NGOs that had been involved in the development of resolution 1325, the development of resolution 1820 represented a sharp contrast. H.E. Anwarul K. Chowdhury of Bangladesh was the first UN Permanent Representative to formally pursue the women, peace and security agenda during his rotation as President of the Security Council in March 2000. He originally hoped to develop a Presidential Statement on women's participation in decision-making during his Presidency but, due to strong resistance from some Permanent 5 (P5) members of the Security Council, he compromised with a Press Statement, which he strategically chose to deliver on International Women's Day in 2008.¹ This landmark speech drew a critical link between peace and gender equality and catalysed the process of collaboration between member States and NGOs on the development of resolution language.

Proponents eventually began targeting October 2000 for the presentation of a resolution, based on several converging factors including the presence of a number of natural allies on the Security Council. One critical ally was Namibia, which was to hold the Presidency that month and which had recently hosted the Beijing +5 meeting that culminated in the development of The Namibia Plan of Action on Mainstreaming a Gender Perspective in Multi-Dimensional Support Operations. Another key supporter was Jamaica, which then had one of the few female Ambassadors to the UN. For the first time, NGOs had opportunities throughout the resolution development process to influence the discourse and debates of member States, both through direct meetings with missions and during the Arria Formula debate,² which took place in the days prior to the adoption of resolution 1325. The process and substance of the resolution has thus led to a strong sense of ownership among NGOs, a commitment that was formalized with the development of the NGO Working Group on Women, Peace and Security, whose aims include holding the Security Council accountable for action on the resolution.

A number of NGOs and member States are now including UNSCR 1325 and 1820 in their shadow reports and official reports to the CEDAW Committee. This helps in further raising awareness about and strengthening the legitimacy of this resolution. It also highlights the synergies between these two aspects of international law.

¹ Interview with Ambassador Anwarul Chowdhury (Bangladesh), 31 March 2009.

² Arria Formula debates are open informal debate between the Council, non-Council member States and other actors who are deemed by Council members to be able to contribute relevant and critical input.

the Wilton Park meeting to prompt the development of a resolution on sexual violence, shortly after the conference the United States Government expressed interest in advancing a resolution on the topic during its Presidency of the Security Council, which was to follow a month later.

In comparison to resolution 1325 (see Box 1), NGOs had relatively limited influence in the development of resolution 1820 language, and some called for broader consultations as they were concerned that it contained too many loopholes² (e.g., “where possible” or “when feasible”). As mentioned earlier, some also expressed concern that the resolution might revert to the discourse of women as victims; however, others argued that women are not either participants or victims but could very well be both.

At the same time, it was pointed out that “The issues of participation and violence are inextricably linked – sexual violence is both a cause and consequence of low levels of women’s participation in all decision-making and participation in day-to-day life” (Cook, 2008). Sexual violence “does more than discourage political engagement”, it “holds communities hostage and prevents access to markets, water-points and schools” (ibid.). From this perspective, some NGOs argued that this resolution addressed a critical barrier to women’s participation and thus reinforced resolution 1325. They also saw the value in sustaining momentum and attention to the broader women, peace and security agenda.

Nevertheless, by the time H.E. Ambassador Zalmay Khalilzad addressed NGOs with an initial draft, he faced resistance from some NGOs, as well as from some veto-wielding members of the Security Council. In a letter addressed to Security Council members and other member States in June 2008, the NGO Working Group on Women, Peace and Security (NGOWG) urged the incorporation of bottom-line requirements in the language of the resolution. Specifically, NGOWG called for the resolution to at a minimum:

- Recognize that sexual and gender-based violence in conflict-affected situations is relevant to the maintenance of international peace and security and therefore the Security Council should ensure systematic monitoring and analysis of such violence and, where appropriate, take timely action;
- Require that the Secretary-General systematically include comprehensive information on acts of sexual and gender-based violence against women and girls in all of his reports on conflict-affected situations and report to the Security Council on ways to improve the level and quality of such reporting;
- Require the Secretary-General to report to the Security Council on ways to improve the UN’s response, in particular at the highest levels, including at the Security Council, to stop gender-based violence in conflict-affected situations. Such a report should draw on the full capacity and expertise of all experts, including UN Action Against Sexual Violence in Conflict and relevant NGOs and women’s groups at the local and global level, and an independent expert could be appointed to lead the study [and prepare the report];
- Require that women’s groups at the local level actively participate in the design and implementation of strategies and programmes to meet their security needs and concerns.

When the final language was presented, NGOs were satisfied that these concerns had been sufficiently addressed. Resistance at the member State level was overcome due to a convergence of factors including a letter signed by 71 women’s organizations in the DRC that called on the Security Council to adopt a resolution using the strongest language to counter impunity. Specifically, they called for strengthened laws and law enforcement, the exclusion of sexual violence from amnesty agreements, the development of monitoring mechanisms, the provision of support to victims and the implementation of proactive policies to prevent impunity from arising in the first place.³ Although China preferred focusing on participation aspects of the agenda, they did not want to be politically isolated and approved the revised

² Interview with Cora Weiss, President, Hague Appeal for Peace, 10 March 2009.

³ NGOs in the Democratic Republic of the Congo, 2008.

iteration, which featured the participation language from resolution 1325. Russia believed that sexual violence remained an unfortunate but inevitable part of conflict that belonged on the ECOSOC agenda, rather than that of the Security Council; however, they eventually relented in response to a push at the ministerial level. Also critical to overcoming objections was limiting the scope of some provisions of UNSCR 1820 to situations on the Security Council agenda.

On 19 June 2008, just over three weeks after the conference at Wilton Park, resolution 1820 was unanimously adopted in a Security Council session presided over by US Secretary of State Condoleezza Rice. The resolution was sponsored by the US and co-sponsored by 50 other member States. It strongly condemns the widespread or systematic use of sexual violence in situations of armed conflict and demands an end to this scourge.

Specifically, UNSCR 1820 states that “sexual violence, when used or commissioned as a tactic of war in order to deliberately target civilians or as a part of a widespread or systematic attack against civilian populations, can significantly exacerbate situations of armed conflict and may impede the restoration of international peace and security”⁴ (see Box 2). It covers two principal instances of sexual violence: (i) when it is used as a tactic of war to deliberately target civilian populations, including to achieve political and military objectives; and (ii) when it is part of a widespread or systematic attack on civilian populations, including opportunistic attacks as a consequence of environments of impunity.

⁴ The full text of UNSCR 1820 can be found at <http://daccessdds.un.org/doc/UNDOC/GEN/N08/391/44/PDF/N0839144.pdf?OpenElement>

Box 2: Sexual crimes and the circumstances in which they occur

The terms used to describe sexual crimes can be confusing. Generally, there are three non-mutually exclusive categories of sexual violence crimes:

- Sexual violence – The Rome Statute of the ICC defines sexual violence to include rape, forced prostitution, sexual slavery, forced impregnation, forced termination of pregnancy, enforced sterilization, trafficking and other offences that rank among the grave breaches of international humanitarian law.¹
- Sexual exploitation and abuse – The Secretary-General’s bulletin on special measures for protection from sexual exploitation and sexual abuse (ST/SGB/2003/13) defines sexual exploitation as “any actual or attempted abuse of a position of vulnerability, differential power or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another,” while sexual abuse is defined as “actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions.”²
- Gender-based violence – The UN Committee that monitors the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) defines gender-based violence in its General Recommendation (GR) 19 as violence that is directed against a woman because she is a woman or that affects women disproportionately.³ It refers to any act that results in, or is likely to result in, physical, sexual or psychological harm (GR 19) and includes violent acts such as rape, torture, mutilation, sexual slavery, forced impregnation and murder, with threats of these acts also considered a form of violence (UNOCHA, n.d).

Another set of terms helps to distinguish the circumstances in which different violations may occur.

- Widespread or systematic sexual violence refers to violence during conflict perpetrated by armed groups “as a strategy of warfare for obtaining political and military ends” and “is used to torture, terrorize, demoralize, injure, degrade, intimidate and punish affected populations” (Goetz and Anderson, 2008). Widespread sexual violence is that “committed on a large scale” and directed towards a “multiplicity of victims” (International Law Commission, 1996), and systematic sexual violence refers to the “organized nature of the acts of violence” and not “random occurrence[s]” (Blaskic case).⁴
- Widespread and opportunistic sexual violence describes such violence “perpetrated on a massive scale with apparent impunity by armed actors, state and non-state, ordinary citizens” (Goetz and Anderson, 2008), resulting in the social normalization of rape in “traumatized post-conflict societies, where demobilized militias flood back into communities awash with small arms and light weapons, and without the requisite psychological debrief for reintegration into civilian life and standards” (ibid.).
- Random and isolated sexual violence refers to crimes that occur despite the presence of the rule of law, in an isolated and random manner and unrelated to political violence. These violations typically fall under national jurisdiction and require multi-faceted responses from government in terms of raising awareness, prevention, response and prosecution.

1 See <http://untreaty.un.org/cod/icc/index.html>

2 See <http://www.un.org/staff/panelofcounsel/pocimages/sgb0313.pdf>

3 See <http://www.un.org/womenwatch/daw/cedaw/recommendations/>

4 Cases cited are listed in the references section.

2: IMPLEMENTING RESOLUTION 1820

Who is responsible?

The text of UNSCR 1820 specifically identifies many stakeholders in conflict and post-conflict situations who can play critical roles in its implementation. Specifically, the resolution calls on:

- **Parties to conflict** to cease all acts of sexual violence against civilians and take all measures necessary to protect them from such violence, including vetting personnel, debunking myths that fuel sexual violence, training personnel, creating and enforcing military discipline for personnel and command staff, and protecting and evacuating persons at risk.
- **States in conflict** to protect civilians and create accountability mechanisms by:
 - Excluding sexual violence crimes from amnesty provisions in conflict resolution processes, ending impunity and developing comprehensive approaches to truth, justice and reconciliation
 - Ensuring that legal mechanisms exist to protect civilians and to prosecute perpetrators
 - Developing health services to provide support and services for victims of sexual violence and judicial processes to address violations.
 - Development and strengthening of civil society networks in order to provide sustainable assistance to victims of sexual violence in armed conflict and post-conflict situations;
- **Other States, regions and sub-regions** to consider violations when establishing and amending sanctions regimes as well as other measures that encourage States to fulfil their responsibility to protect civilians from violence. It further calls on States to develop policies, activities and advocacy tools promoting the protection of women from violence in armed conflict.
- **The UN Secretary-General** to lead the development and implementation of:
 - Training programmes for all UN-deployed peacekeepers and humanitarian personnel to assist with recognizing, preventing and responding to sexual and other forms of violence against civilians in consultation with the Security Council and the Special Committee on Peacekeeping Operations
 - Effective guidelines and strategies to enhance the ability of peacekeepers to prevent violence and protect civilians in conflict including through systematic reporting on women in conflict
 - Effective mechanisms for protecting refugees and internally displaced persons from violence in and around UN-operated camps, in disarmament, demobilization and reintegration processes, and in justice and security sector reform
 - Mechanisms to consult with Special Envoys and local women on prevention and conflict resolution efforts and on strategies for the maintenance of security and post-conflict peacebuilding, and to encourage the participation of women in decision-making
 - Dialogue between the UN and conflicting parties to address the issue in the context of conflict resolution.

- **UN agencies and or entities**

- o To support the development and strengthening of judicial, health systems and other national institutions, and of local civil society networks in order to provide sustainable assistance to victims of sexual violence
- o To develop and implement effective mechanisms for protecting refugees and internally displaced persons from violence in and around UN-operated camps, in disarmament, demobilization and reintegration processes, and in justice and security sector reform

- **Troop and police contributing countries** to take preventive action to reduce sexual exploitation and abuse including through pre-deployment training, in-theatre training, recruiting and deploying more female peacekeepers and police, becoming more responsive to allegations of sexual exploitation and abuse, investigating and prosecuting accused personnel, implementing disciplinary and accountability mechanisms, and protecting civilians at risk in situations of armed conflict.

- The **Peacebuilding Commission** to provide advice and recommendations to prevent and resolve conflicts, including preventing and responding to sexual violence in conflict, and to consult with women's organizations on a wider approach to gender issues.

- The **Security Council** to adopt where necessary appropriate steps to address widespread or systematic sexual violence for situations on the Council's agenda and to take sexual violence into consideration when reviewing State-specific sanctions.

- **Civil society and NGOs** to engage in dialogue with UN agencies, envoys and the Peacebuilding Commission on conflict resolution, solutions and mechanisms for the protection of women and on the promotion of women's rights in conflict.

UN Action Against Sexual Violence in Conflict (UN Action),⁵ although not specifically identified in the resolution language, also has a role to play in coordinating the 12 departments and agencies that advocate for an end to all forms of gender-based violence. However, it is not a senior body and has no power to compel or mandate action to bring about real change.

Clarifying the issues and strengthening the discourse

There are a number of issues around resolution 1820 and crimes of sexual violence that need to be clarified in order to ensure that policy responses are complete.

One issue is that there has been conflation between crimes of sexual violence in armed conflict and crimes of sexual exploitation and abuse perpetrated by personnel working in peace operations. The latter began coming to the attention of the international community in 2002, when a report commissioned by the United Nations High Commissioner for Refugees

5 See <http://www.stoprapenow.org/>

Box 3: Situations currently on the Security Council agenda

Provision 1 of UNSCR 1820 applies to situations on the Security Council agenda, which currently include the following: Afghanistan, Bosnia and Herzegovina, Burma/Myanmar, Burundi, Central African Republic, Chad, Côte d'Ivoire, Cyprus, Democratic Republic of the Congo, Eritrea, Ethiopia, Georgia, Great Lakes Region, Guinea-Bissau, Haiti, Iraq, Liberia, Middle East/Palestine, Sierra Leone, Somalia, Sudan, Timor-Leste and Western Sahara.¹

¹ Summary statement by the Secretary-General on matters of which the Security Council is seized and on the stage reached in their consideration, S/2009/10/Add.26, July 6, 2009.

(UNHCR) and Save the Children was leaked to the press. This outlined sexual exploitation and abuses that had been perpetrated by peace operations personnel in refugee communities in three African countries. However, while crimes perpetrated by peace operations personnel, like crimes of sexual violence in conflict, tend to occur as a by-product of environments of impunity, they represent a relatively small subset of violations under UNSCR 1820. Moreover, the response of the UN to these allegations was relatively swift and aggressive, motivated by the potential damage that they could have on its reputation. The Secretary-General quickly appointed Jordanian Prince Zeid to investigate and develop policy recommendations, which included improving forensic investigation techniques, enforcing command responsibility, implementing mandatory pre-deployment and in-theatre training for all personnel, enforcing zero-tolerance policies, monitoring prosecution rates of accused, providing support to victims and repatriating personnel implicated in sexual violence.

While weaknesses remain in the effectiveness of implementation efforts, sexual crimes by peacekeeping forces occur within the context of a clear command structure with political accountability. Theoretically, therefore, they can be addressed relatively easily, given the political will of UN actors and of troop and police-contributing countries. On the other hand, the vast majority of crimes covered under resolution 1820 are carried out by armies and militias (whose commanders may be complicit), or by ex-combatants and civilians who exploit the absence of the rule of law once conflict has ended.

A second issue arose during the Security Council deliberations on resolution 1820 when Sudan pointed out that over 90,000⁶ rapes occur every year in the United States and questioned whether or not this might be considered sufficiently 'widespread' to lead to a Security Council referral. In fact, the resolution was intended to address circumstances in which sexual violence is used as a deliberate tactic of war or when it is widespread and opportunistic in nature and results from the absence of effective rule of law due to armed conflict. Concern over this potential misunderstanding prompted the decision to make specific reference to situations on the Security Council agenda in operational provision 1 (see Box 3). Arguably, however, the remaining provisions of the resolution are not limited to such situations and could apply to any instance where sexual violence has been used as a weapon of war or where it has otherwise become sufficiently widespread in conflict and post-conflict situations.

A third issue is that some States, notably Sudan, have suggested that these violations are linked to poverty and culture, and that international actors must focus on poverty rather than sexual violence. While there is certainly some truth to the argument that violations are symptomatic of broader socio-economic challenges, this represents only part of the problem; it does not negate the responsibility of States to act to prevent crimes, protect populations at risk, support victims of sexual violence and prosecute perpetrators. Nor does it discharge the responsibility of the international community to respond to war crimes, crimes against humanity and genocide (see next section) if States are either unable or unwilling to protect their own citizens. Those who argue that culture is a justification for rape must be challenged in order to prevent this from becoming a convenient excuse for inaction and creating an environment of impunity.

Finally, there is also a need to challenge the idea that sexual violence is an inevitable if unfortunate part of conflict. "Historical evidence suggests that rape in the context of war is an ancient human practice" (Gottschall, 2004), and the systematic targeting of women can be traced back to the Greeks, Romans and Hebrews (Action Professionals' Association for the People, 2002). Prior to Bosnia and Rwanda, perhaps the best-documented example is the fall of Berlin in 1945 when, under orders from Stalin, the Red Army used sexual violence against women to exact revenge for the invasion of the USSR (Beever, 2002). However, using sexual violence as a specific weapon of war – and the level of violence of some attacks in recent conflicts (e.g., using objects to penetrate and destroy genitals) – may represent a new trend. There is also increasing recognition in international law that it can pose a potential threat

6 *United States Crime Rates 1960–2007. Available at <http://www.disastercenter.com/crime/uscrime.htm>*

to international peace and security. Hence, these crimes are more frequently being criminalized and prosecuted not only by domestic courts but also by international courts and tribunals, and even in countries other than those where the crimes occurred (BBC, 2009) because of universal jurisdiction. There is much better documentation, investigation and information sharing on violations, as well as increasing collaboration between NGOs, member States and the UN to address sexual crimes related to conflict. These changes have been critical in helping to shift the discourse to a firm rejection of passivity, coupled with a call to action towards ending sexual violence.

3: SEXUAL VIOLENCE AND INTERNATIONAL LAW

Key definitions

The Security Council's acknowledgment in provision 4 of resolution 1820 that forms of sexual violence can constitute war crimes, crimes against humanity or acts of genocide adds to more than a decade's worth of international criminal jurisprudence in this area.

War crimes

The Statute of the ICC (or Rome Statute) states that a war crime is the "violation of laws or customs of war" that includes "grave breaches of the Geneva Conventions" (Art. 8.2.a) such as torture and inhumane treatment and "other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law" (Art. 8.2.b). Rape and other types of sexual violence – including sexual slavery, enforced prostitution and forced pregnancy – fall within these categories of war crimes (Art. 8.2.b (xxii)). A war crime is particularly prosecutable "when committed as part of a plan or policy or as part of a large-scale commission" (Art. 8.1). In the cases of the former Yugoslavia and Rwanda, sexual violence and rape were used as tools of war and deliberately targeted civilian populations – for example, by Bosnian Serb armed groups to terrorize the Bosnian Muslim civilian population in the rape camps of Foca in the former Yugoslavia (Stiglmayer, 1994), and by Hutus to intimidate and destroy the Tutsis in the Taba commune in Rwanda.

Crime against humanity

A crime against humanity is an action (or actions) committed as part of a widespread or systematic attack against a civilian population. In other words, for sexual violence to be a crime against humanity it must be part of a campaign that is either widespread – i.e., "committed on a large scale" and directed towards a "multiplicity of victims" (International Law Commission, 1996) – or systematic – i.e., related to the "organized nature of the acts of violence," and not a "random occurrence" (Blaskic case: Para. 101, which makes a reference to Kunarac's Appeal Judgment: Para. 94 as a precedent). Individual acts of sexual violence committed by a person acting on his "own initiative" towards a victim do not amount to a crime against humanity (International Law Commission, 1996). However, such acts can be crimes against humanity if the individual knows that there is an "attack on the civilian population, know[s] that his act fits in with the attack and the act must not be taken for purely personal reasons unrelated to the armed conflict" (Tadic case: Para. 659).

In many instances, including more recently in the DRC, many rapes that have been committed by civilians, ex-combatants or even members of armed forces would be classified as widespread and opportunistic. During war and conflict, the disintegration of law and order and of an effective legal and judicial apparatus, the prevalence of a culture of violence and the accessibility of weapons make opportunistic rape on a widespread or "large scale" more likely (US Senate, 2008).

The ICC, ICTY and ICTR all recognize that widespread or systematic rapes during armed conflict can

amount to crimes against humanity. “Armed conflict” exists when there are instances of armed violence between States or “protracted armed violence between governmental authorities and organized armed groups or between such groups within a state.” (Kunarac case)

Genocide

An act of genocide is “committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group” (Rome Statute, Art. 6). The precedent for genocidal rape was set by the Akayesu case in Rwanda. In addition, the ICTR ruled that sexual violence there operated as an “integral part of the process of destruction, specifically targeting Tutsi women and specifically contributing to their destruction and to the destruction of the Tutsi group as a whole” (Akayesu case: Para. 731).⁷

Rape as an act of torture

The ICTY in Furundzija and Celibici and the ICTR in Akayesu have convicted individuals with command responsibility for rape as a form of torture. The courts have found that in situations of armed conflict rape amounts to torture if it consists of the following elements: (i) an act or omission that causes severe pain or suffering, whether mental or physical; (ii) which is inflicted intentionally; (iii) for the purposes of obtaining information, a confession from the victim or a third person, or punishing the victim for an act he or she or a third person has committed or is suspected of having committed; and (iv) committed by, or at the instigation of, or with the consent or acquiescence of, an official or other person acting in an official capacity. In Akayesu, the court held that rape and sexual violence are among the worst and most severe ways of inflicting “serious bodily and mental harm.”

The jurisprudence on rape as an act of torture under the statute on war crimes is more developed in the case law from regional human rights courts such as the European Court of Human Rights in Aydin and the Inter-American Court of Human Rights in Mejia. In Aydin the Court held that rape involves the infliction of suffering at a requisite level of severity to place it in the category of torture. Similarly the Mejia court cited Article 147 of the Fourth Geneva Convention to categorize rape as a form of torture that amounts to a “serious offence” or “war crime.”

While there is no case law on the use of rape as a form of torture coming out of the African Union court system, article 11 of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa calls on signatories to protect “asylum seeking women, refugees, returnees and internally displaced persons, against all forms of violence, rape and other forms of sexual exploitation, and to ensure that such acts are considered war crimes, genocide and/or crimes against humanity and that their perpetrators are brought to justice before a competent criminal jurisdiction.” While there is no explicit mention of the use of rape as a form of torture in the Protocol, the jurisprudence from other regional bodies and courts sets a framework for such prosecutions in the future.

Overlapping crimes

A particular instance of rape or sexual violence can be a war crime, crime against humanity and/or act of genocide if it has all the elements of these offences. For instance, a rape that is part of a widespread or systematic attack against civilian populations (crime against humanity) can also have elements of an act commissioned as a tactic of war in order to deliberately target civilians (war crime) as well as elements of the act of eliminating totally or partially a group based on their national, ethnic, racial or religious characteristics (genocide).

Command responsibility

UNSCR 1820 demands that all parties to armed conflict immediately cease all acts of sexual violence

⁷ *A Tutsi woman reported that while the Hutu perpetrators were raping her they said “that they wanted to kill all Tutsi so that in the future all that would be left would be drawings to show that there were once a people called the Tutsi in Rwanda” (Human Rights Watch, 1996).*

and “take appropriate measures to protect civilians including women and girls from all forms of sexual violence which could include, inter alia, enforcing appropriate military disciplinary measures and upholding the principle of command responsibility.” Parties to armed conflict can range from state actors such as the national army and law enforcement to non-state armed actors and rebel groups.

Upholding the principle of command responsibility is imperative since it reduces the level of impunity. Article 28 (a) of the Rome Statute calls for criminal responsibility on the part of a military commander or a person acting as a military commander who “either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes” and “failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.” Military commanders’ knowledge can be ascertained by direct or circumstantial evidence. They can also be held responsible if they “had reason to know,” i.e., had some information/indication that would have given them notice of unlawful acts committed by subordinates. Article 28 (b) uses similar wording for superior and subordinate relationships not covered by (a).

There have been convictions for command responsibility for acts of sexual violence carried out by subordinates. For example, the ICTY found in Celebici that the accused could not have escaped knowledge of the commission of rape by his subordinates given the “frequent and notorious” nature of these crimes. The court concluded that the accused “did not institute any monitoring and reporting system whereby violations committed in the prison-camp would be reported to him,” In Blaskic and Semanza, the ICTY and ICTR respectively found the accused guilty of ordering their subordinates to commit the crimes. In addition, in the Blaskic case the court also found the accused guilty for his failure “to take the necessary and reasonable measures which would have allowed these crimes to be prevented or the perpetrators thereof to be punished” (para. 269).

Sexual violence and the Security Council

Sexual violence during armed conflict has become a matter of concern for the Security Council in light of the atrocities committed in Rwanda and the former Yugoslavia and more recently in Darfur and the DRC. By creating ad hoc tribunals and passing resolutions addressing sexual violence in particular regions, the Council has created a record of examining sexual violence during armed conflict. Resolution 1820 also builds on resolution 1674 on the protection of civilians in armed conflict, which condemns sexual violence and demands that all parties put an end to this practice.

In resolution 1820, the Security Council recognizes that effective steps to prevent and respond to acts of sexual violence used or commissioned as a tactic of war in order to deliberately target civilians or as part of a widespread or systematic attack against civilian populations “can significantly contribute to the maintenance of international peace and security.” However, it does not explicitly state that such acts are threats to international peace and security, which would have invoked the authority and duty of the Security Council under Chapter VII of the Charter of the UN to evaluate and address them.⁸ Nevertheless, the resolution does express the Council’s “readiness when considering situations on its agenda to, where necessary, adopt appropriate steps to address widespread or systematic sexual violence.” It is up to the Security Council to determine when sexual violence is widespread or systematic.

The binding nature of Security Council resolutions

Security Council resolutions are binding on the member States of the United Nations and the Council itself (Dunoff et al., 2006). Chapter V, article 24 of the UN Charter gives the Security Council the responsibility to maintain international peace and security. Chapter VII, article 39 further provides it with the right to “determine the existence of any threat to the peace, breach of the peace, or act of aggression.” There

⁸ Chapter VII: Action with Respect to Threats to the Peace, Breaches of the Peace and Acts of Aggression, Charter of the United Nations, signed in San Francisco, California on 26 June 1945.

are no formal institutions that operate as mechanisms for checks and balances on the decisions of the Security Council. While the Security Council can ask the International Court of Justice (ICJ) for advisory opinions (Fassbender, 2000), the ICJ has no power of judicial review.

Given this broad discretion on decision-making and the absence of judicial review, changes in what is seen to constitute a threat to peace and security are the result of debates within the Council itself. For example, as noted above, China and Russia were not eager to include sexual violence in conflict as a threat to peace and security. However, this broad discretion on the part of the Security Council allows it to check for situations of sexual violence that might not have been specifically established in UNSCR 1820.

Types of data required for action

To evaluate whether sexual violence during armed conflict is hindering the restoration of international peace and security, and to sustain political will in the international community and lobby for effective intervention, the Security Council requires complete and accurate data. Donor countries that fund projects and programmes undertaken by various UN agencies also want “concrete” information, including “anecdotal information” and “authoritative voices” (WHO, 2008). The data would have to provide evidence that sexual violence is occurring in a manner that links it to international peace and security. This would require a uniform set of indices for which UN agencies collect data. Some possible examples would be the spread of HIV as a result of rape, the displacement of civilians due to rape or the threat of rape, the number of children born because of rape, and the increase or decrease in the trends of sexual violence (ibid.). It would also be essential to assess under which jurisdictions the instances of rape fall – domestic or international. In addition, it would be necessary to establish whether rape constitutes a violation of international human rights law, of international humanitarian law, or both.⁹ Finally, it would be essential to determine which situations involving rape would act as triggers for a response by Security Council.

⁹ *International human rights law deals with individual human rights and fundamental freedoms; international humanitarian law specifically relates to the rights of non-combatants (including wounded members of the armed forces and prisoners of war) during conflict.*

4: A FOCUS ON THE ROLE OF PEACEKEEPERS

Countries recovering from conflict face many challenges, and the national security sector often lacks both the capacity and will to address the security vacuum that can follow the cessation of hostilities. The days and weeks immediately after the end of conflict can be a particularly vulnerable and decisive time. A rapid and strong peacekeeping response can make the difference between the emergence of opportunistic violence that becomes normalized in civilian life and the restoration of security and infrastructure. Lack of security in the immediate aftermath of conflict can have long-lasting and devastating consequences for women and can also contribute to renewed tensions.

Key to rapid and effective deployment is ensuring both that the funding is available at the time it is needed, and that human and material resources with the requisite skills are ready and able to be deployed at short notice. It also requires a strong mandate with appropriate referencing to resolutions 1325 and 1820. This involves having an inventory of personnel who are on stand-by and the ability to mobilize necessary equipment to respond to the circumstances on the ground. Furthermore, peacekeepers must have robust mandates and be trained to deal with gender-sensitive issues, including through strong forensic practices for investigating crimes and the inclusion of gender perspectives in the development of policies and programmes.

Peacekeepers can improve their prospects for providing effective protection for women through community-based intelligence and through developing patrol schedules that focus on high-risk times and places, such as when women are collecting firewood or accessing water. As noted earlier, simple and non-intervention tactics can help to deter attacks (Goetz and Anderson, 2008); however, peacekeepers must be deployed with the proper equipment to respond to local circumstances. This can help to prevent opportunistic crimes from becoming widespread before the domestic rule of law can be established.

Another critical way to strengthen the peacekeeping response is to recruit and deploy more female troops and police. Evidence indicates that victims are more likely to trust female officers, and are therefore more likely to report violations. In places where effective judicial systems are in place, reported cases are more likely to be investigated and prosecuted. In Liberia, the deployment of two consecutive all-female peacekeeping police units has helped bring about a decrease in violations and has also encouraged local women to seek employment in the security sector (UN News Centre, 2009). This has the potential to make peace more sustainable once peacekeepers depart. Another related matter is ensuring that ex-combatants who have perpetrated sexual violence are excluded from employment in the security sector and in government.

It is also critical to include women in peace processes since they are generally the most affected by conflict, and to ensure that their empowerment and participation in post-conflict reconstruction is high on the list of priorities. All too often, policies designed to reintegrate ex-combatants into civil society place existing populations at significant risk. Well-intentioned demobilization processes often strengthen economic opportunities for ex-combatants through training and financial assistance (often in exchange for guns), while unarmed groups including women generally receive little or nothing, placing them at a relative disadvantage moving forward. Such distorting policies must be balanced with broader socio-economic development programmes for non-combatants and must counter perceptions that ex-combatants are being rewarded for their behaviour.

Within their ranks, peacekeepers must constantly enforce the zero tolerance policy for any abuses that occur. Each peacekeeping mission is now required to designate a focal point for sexual exploitation and abuse at mission headquarters and in all field offices with a significant personnel presence. Military, civilian police and civilian personnel, including members of the local population and other UN and NGO

agencies, can report a complaint to the focal points, who are required to make sure this is properly addressed. Complaints on sexual misconduct and abuse can also be made directly to the UN Office of Internal Oversight Services (OIOS) through its local office (where this exists) or in New York.

However, complaint mechanisms are few and far between in rural areas, and the investigations can take as much as a year. Moreover, it is up to the member States to prosecute accused soldiers who have been repatriated, and there is strong concern that some fail to do so, demonstrating a lack of political will to hold perpetrators accountable for their actions. The UN must actively monitor that police and troop-contributing countries prosecute perpetrators decisively and publicly to deter others from committing similar crimes, and take action against States that do not.

Finally, in order to be effective, all of these recommendations require the full commitment and leadership of the Special Representatives of the Secretary-General (SRSG) within each mission. SRSGs must lead by example and must continuously reinforce the principles of resolutions 1325 and 1820. The Security Council and the Secretary-General should hold SRSGs to account when they fail to incorporate these principles in meaningful ways.

5: STRENGTHS AND WEAKNESSES OF RESOLUTION 1820

This section examines some of the strengths and weaknesses regarding the language and utility of UNSCR 1820 (see also the earlier section on clarifying the issues and strengthening the discourse).

Strengths

Security Council action

The resolution clearly brings sexual violence against civilian populations during conflict and post-conflict within the mandate of the Security Council. The fact that every country report that comes before the Council has to include the issue of sexual violence during conflict is a major accomplishment to further the women, peace and security agenda. The resolution also opens the door for structural reform, as it requires the Council to address sexual violence during conflict as the situation evolves.¹⁰

Identifying crimes

Resolution 1820 brings much more focused attention to an issue that has only recently been addressed in international law as a feature of conflict, despite its prevalence in wars throughout history. The links it makes between sexual violence and international security theoretically reduce ambiguity on the conditions in which the international community can intervene to address these types of violations.

Debunking myths

An important feature of the resolution is that it challenges the belief that sexual violence is an inevitable and acceptable consequence of conflict, a belief that breeds a culture of impunity that carries on into post-conflict environments (Goetz and Anderson, 2008). It demands that all parties to armed conflict immediately take appropriate measures to protect civilians from all forms of sexual violence including, if appropriate, debunking myths that fuel such violence. This feature provides an opening for addressing the root causes of this practice.

Breaking the silence

This resolution can be a critical tool to help break the silence in countries where sexual violence crimes are widespread but where the issue tends not to be raised in public forums due to either taboo or stigma. Particularly in communities where such issues are so highly sensitive, the UN has a critical role to play in bringing these issues to light.

Reforming laws

In situations on the Security Council agenda, resolution 1820 can help NGOs and civil society hold their governments accountable, including reforming national laws that are not in keeping with both resolutions 1325 and 1820 as well as international women's rights conventions such as CEDAW.

Excluding sexual violence crimes from amnesty agreements

Resolution 1820 reiterates resolution 1325 language, which calls for the exclusion of sexual violence crimes from amnesty provisions.

Identifying actors and actions

The resolution identifies a breadth of specific actors and of actions that must be taken by these actors in order to discharge the obligations it outlines. For example, it provides for "training programmes for all peacekeeping and humanitarian personnel deployed by the UN to help them better prevent, recognize and respond to sexual violence."

10 Interview with Marianne Mollmann, Advocacy Director, Women's Division, Human Rights Watch, 23 April 2009.

Threatening sanctions

Resolution 1820 specified that sexual violence can be considered in sanctioning processes, meaning that sanctions can theoretically be applied against governments and other parties to armed conflict who are either involved in perpetrating sexual crimes against civilians motivated by political ends, or who are negligent in challenging impunity for crimes committed. In practice, however, sanctions in general are difficult to apply due to probable objections from China and Russia, which generally do not favour using this tool to influence political actors.

Reinforcing participation

Resolution 1820 reinforces the need for the participation of women in decision-making and encourages all parties to facilitate this. Violence affects the ability of women to participate, and implementing the resolution can help overcome this key barrier. In addition, women's participation has the potential to stem crimes of sexual violence by ensuring the issue is addressed.

Highlighting specific issues

The resolution specifically speaks to the problems of sexual exploitation and abuse, command responsibility, the issue of sexual violence in UN-run refugee and IDP camps and the inclusion of regional bodies in rehabilitation and reconstruction. This is commendable and in some cases reflects political will.¹¹

Including regional bodies

Including regional bodies, such as the African Union, is seen by NGOs as politically astute, given that such bodies have better access to and understanding of the particular region and can potentially be more effective in prevention during peacekeeping missions. In this regard, the African Union's gender policy of February 2009 calls on the organs of the Union, member States and regional economic communities to "integrate gender in policies, programmes and activities on conflicts and peace, by using the frameworks of resolutions 1325 and 1820 of the UN."¹²

Sustaining momentum on the women, peace and security agenda

A more general strength of having a new resolution is that it helps to sustain momentum on the broader agenda of women, peace and security, and it serves as an opportunity to remind the international community of resolution 1325.¹³ Resolution 1820 specifically recalls the language of the prior resolution and "encourages all parties to [peace talks] to facilitate the equal and full participation of women at decision-making levels."

Weaknesses

Resolution 1820 also has a number of weaknesses related to both its language and focus, as well as to the lack of mechanisms for continuous monitoring and evaluation. These include:

Loophole language

Resolution 1820 still contains many instances of loophole language (e.g., "where necessary"/ "where appropriate"). These may essentially provide escape clauses for political actors, raising the questions of whether or not this resolution will in fact be able to elicit the kind of response that would be required to halt the type of violations it describes.

Ignoring gender-based violence

Resolution 1820 refers only to sexual violence and does not address the broader category of gender-

11 *The United States was specifically interested in including sexual exploitation and abuse.*

12 *Available at www.africa-union.org/root/au/auc/departments/ge/african%20union%20gender%20policy.doc.*

13 *Interview with Polly Truscott, Advisor on International Organizations, Amnesty International, 14 April 2009.*

based violence, which includes both sexual and non-sexual violence perpetrated based on a person's gender.

Limited focus

The resolution focuses primarily on crimes committed during conflict and does not address the fact that sexual violence could exacerbate tensions before conflict breaks out. Furthermore, it fails to explicitly recognize that sexual violence can continue and even increase in the immediate aftermath of conflict as civilians and demobilizing combatants exploit the absence of effective law and order. It does call for the Peacebuilding Commission (PBC) to offer advice on sexual violence in the aftermath of armed conflict; however, this is vague and not binding on the Security Council. It also does not go far enough in calling for the capacity building of institutions such as domestic security sector entities that are critical to long-term stability, and should ideally have included language on increasing the participation of women in local police forces and strengthening legal codes to protect women's rights.

Limited provision for reporting

It has yet to be decided by the Security Council whether there will be regular – e.g., annual – reporting on resolution 1820. There is no provision for this in the resolution itself; the recently produced Secretary-General's report, which was required by the resolution, is a one-time only report.

Lacking leadership and monitoring mechanisms

To date, the UN has failed to identify a focal point to address issues related to women, peace and security at a high level, despite efforts by some States to include this in the language of resolutions. NGOs have also called for a high-level coordinator of efforts to prevent and punish sexual violence in conflict (Human Rights Watch, 2009). There is a need for a strong, highly experienced and respected leader who would reinforce, support and help drive existing UN efforts against sexual violence. Some States and NGOs have also advocated the creation of a Security Council working group on women, peace and security, building on the momentum generated by the Working Group on Children and Armed Conflict.

6: CASE STUDIES OF LIBERIA AND NEPAL

These two case studies examine whether and how resolution 1820 can be seen as a useful tool in countries that are currently recovering from conflict. Each provides a brief history of the conflict, describes the role of sexual violence and the response of the government in post-conflict environments, and makes recommendations.

Liberia

Liberia suffered from 14 years of civil war and mismanagement under successive dictatorial, corrupt and repressive governments. The conflict was characterized by widespread and systematic violence against civilians, including sexual violence. According to a situation analysis of women survivors of the conflict by the Isis-Women's International Cross Cultural Exchange (Isis-WICCE), in collaboration with the Ministry of Gender and Development (MGD) and the Women in Peacebuilding Network (WIPNET), sexual violence continued to affect women long after the conflict, and there are currently serious reproductive and mental health issues (Isis-WICCE, 2008). The research targeted 643 respondents in four counties (Maryland, Grand Kru, Bong and Lofa), 62.4 per cent of whom reported experiences of sexual torture during the war; 44 per cent reported gynaecological problems; and 61.4 per cent had at least one physical complaint.

Another study conducted by Amnesty International found that "all sides systematically abused the rights of women and girls. An initial study by the World Health Organization (WHO) and Liberian NGOs in 2004 found that in camps for internally displaced persons (IDPs), between 60 and 70 per cent of the civilian population had suffered some form of sexual violence. Many had been gang-raped" (Amnesty International, 2003). While numerous acts of sexual violence occurred during the conflict, widespread opportunistic rape continued afterwards due to the absence of the effective rule of law.

Liberia has been recovering from conflict since 2003, supported by the UN Mission in Liberia (UNMIL) and other UN agencies. Implementation of UNSCR 1325 began with the appointment in January 2004 of a Senior Gender Adviser who focused on protection for women and girls. UNMIL provided support to the police by introducing training in the police academy for all police officers on gender mainstreaming and gender-based violence. The mission also supported the Government's efforts to introduce special measures to empower women and girls who were affected by conflict and to raise the number of female police officers to over 12 per cent.

UNMIL is one of only two missions currently led by a woman, SRSG Ellen Margrethe Løj. It has also hosted both the first and second-ever all-female UN police unit, which has helped to increase trust in the police and has encouraged local women to enrol in this traditionally male-dominated career (Relief Web, 2008).

In 2005, Liberians chose Ellen Johnson-Sirleaf, the first female elected Head of State in Africa, to be their President. Her government has presided over perhaps the most ambitious attempt in the world to reform the situation of women. Although the country faces many challenges in its recovery, including poverty and limited infrastructure, it is experiencing economic growth and has developed many progressive policies, such as the Girl Child Education Policy. Women are represented at top levels in government, including in Foreign Affairs, Commerce and Industry and Youth and Sports, and a woman leads the national police.

To help strengthen awareness of rape issues in the country, UNMIL and the Government re-launched

a Stop Rape Now campaign in November 2007 to break the silence and “since then, musical concerts, sporting events, road shows, screening of anti-rape documentaries, among other activities, have been organized in 10 of Liberia’s 15 provincial capitals with the active involvement of local authorities” (Relief Web, 2008).

Enhancing the empowerment of women has also been seen as key to poverty reduction and strengthening governance. Liberia’s Poverty Reduction Strategy Paper (PRSP) mandates the MGD to ensure the effective protection of vulnerable groups within the justice system and “to address the social consequence of the war, including gender-based violence, which continues to permeate Liberian society today” (IMF, 2008). The Ministry of Justice’s Sexual and Gender-Based Violence Crimes Unit is tasked with investigating and prosecuting sexual violence crimes,¹⁴ and legislative reform is beginning to address inequitable laws. The Government also recently launched its 1325 and 1820 National Action Plan and Sexual and Gender-Based Violence Action Plan, which are currently being implemented by Government, the UN and both international and national NGOs. Awareness levels on UNSCR 1820, which are currently low due in part to its recent adoption, could rise quickly as the implementation of these plans advances.¹⁵

Another important advance is the Truth and Reconciliation Commission (TRC), established in 2005 to investigate gross human rights violations and violations of international humanitarian law.¹⁶ This has helped to develop a clearer understanding regarding the level of violence experienced by women, as well as the consequences, and offers hope that prosecutions will deter future acts and will include reparations to support victims. However, the TRC has been subject to considerable criticism,¹⁷ including that it has not managed time wisely; has been prone to in-fighting, which has distracted it from fulfilling its mandate; and has not been adequately inclusive of civil society, which is expected to play a leading role in ensuring that its recommendations are taken forward. Many women did not tell their stories because they feared for their personal security and/or they lacked clarity on the purpose of the TRC.

Despite challenges, civil society organizations have moved forward with several parallel programmes and projects. For example, the Women NGOs Secretariat of Liberia (WONGOSOL) and its members, supported by UNIFEM and the International Center for Transitional Justice, led a community dialogue for women to put forward their perspectives on the pillars of transitional justice (prosecution, amnesty, truth telling, memorialization, reparation and reconciliation). Recommendations from this exercise have been forwarded to the TRC.¹⁸ Women’s groups are currently evaluating the extent to which these and other inputs of women are covered in the final TRC report, which was released this June. While the report is clearly informed by the impacts of conflict on women, the recommendations have some limitations. For example, the section on amnesties does not specifically discuss the exclusion of sexual violence crimes. Moreover, despite a section title on women’s empowerment, there is no reference to women’s participation and most recommendations focus on protection and response.

While considerable progress has been made, five years after the end of conflict the numbers remain troubling. According to the MGD, “in the first five months of 2008, 450 cases of rape and 109 cases of domestic violence were reported” to the authorities (Momodu, 2008). Of the rape cases, “379, or 84 per cent, of the survivors were younger than 18, 201 (45 per cent) were younger than 13, and 39 (9 per cent) were between one and five years, and it is feared that these statistics are just the tip of the iceberg as the figures represent only cases reported at various health facilities” (ibid.). Indeed, a Columbia University study in late 2007 showed that “incidents of violence were [overwhelmingly] being reported to people in the family or in the immediate circle, far less to the police or court system or even community leaders” (Shiner, 2007). In the eastern region of Liberia, traditional values continue to hinder prevention

¹⁴ Although the unit is not fully operational as yet. Teleconference with Lindora Howard-Diawara, Executive Director, WIPNET, 5 May 2009.

¹⁵ Ibid.

¹⁶ See the mandate of the TRC at <https://www.trcofliberia.org/about/trc-mandate>

¹⁷ Correspondence with Lindora Howard, 5 June 2009.

¹⁸ Teleconference with Lindora Howard-Diawara, Executive Director, WIPNET, 5 May 2009.

and accountability. Impunity also persists, meaning women are unable to take their abusers to court because of cultural notions that a victim who seeks justice is an enemy of men.¹⁹

In light of the history and prevalence of sexual violence in Liberia, the definition of rape was recently expanded in the formal criminal code.²⁰ Experts warn, however, that these laws must be effectively enforced to have a real impact in societies with histories of impunity (UNMIL, 2008). Accordingly, civil society, Government and the UN have become deeply engaged in working to deliver accountability to victims of sexual violence crimes.

Recommendations

While it is clear that monumental strides have been made in the effort to empower and protect women and respond to their needs, Liberia remains a very fragile country, and there is a very real danger that the gains made could be reversed. The risk to women is clear, and accordingly strategies for advancing their situation must be balanced with the goal of ensuring that peace is sustainable by addressing the root causes of conflict.

However, it is equally clear that more needs to be done to stem perceptions of impunity. The challenge is to focus on preventive mechanisms, critical to which is strengthening the capacity of national institutions to enforce the law, prosecute and rehabilitate perpetrators, empower women in both economic and political terms, and build the capacity of civil society organizations. This requires strengthening legislation, government policy, political will and implementation and monitoring mechanisms.

Regional bodies such as the African Union and the Economic Community of West African States (ECOWAS) and regional NGO networks such as the Mano River Women's Peace Network (MARWOPNET), WIPNET and the West African Network for Peacebuilding (WANEP) can also play critical roles in the maintenance of peace through the development of proactive, complimentary and coherent policies. It is also critical to build the capacity of local NGOs such as the Association of Female Liberian Lawyers (which was instrumental in drafting the law on rape), the Liberian Women's Initiative, the umbrella organization WONGOSOL and rural women's organizations, with a particular focus on understanding how these groups can use resolutions 1325 and 1820 to help strengthen advocacy and programming.

Both the Government and the UN have demonstrated strong political will to use and implement these resolutions in Liberia, as have many donors such as Finland (New Liberia Online 2009), which have actively supported the advancement of this agenda. While much progress has been made, it is clear that even more is required to counter the culture of impunity that continues to threaten both women and the overall stability of the country.

Nepal

Sexual violence against women and girls was a prevalent feature during the decade-long armed conflict in Nepal. In 1996, the Maoist group known as the Communist Party of Nepal or CPN-M declared a people's war against the governing political parties and the monarchy. The conflict ended with a mutual ceasefire in May 2006, but sexual violence persists. The lack of human rights monitoring during the conflict and the continued violence post-conflict has allowed men to continue raping women with impunity. The perpetrators include the cadres of the Maoists such as the People's Liberation Army and the Youth

¹⁹ *Ibid.*

²⁰ *Teleconference with Joana Foster, former UNMIL gender advisor, 21 April 2009.*

Communist League, government security forces, and civilians and members of the community. The causes of rape range from political motivations to it being a by-product of cultural and legal impunity.

Collecting data on sexual violence from 1996 to the present has been extremely difficult. Most rapes have taken place in the rural areas where, due to fear of recruitment and forced conscription by the Maoists, men have often moved out of the villages leaving the women vulnerable.²¹ NGOs have had difficulty collecting data or providing services for victims of sexual violence. For instance, during the two years that the International Institute for Human Rights, Environment and Development (INHURED) worked in the Makwanpur district conducting field research and documenting human rights violations, only 10 cases of sexual violence were recorded due to threats from the Maoist rebels both against the human rights defenders and the victims.²² Another hindrance is the culture of silence and social stigma. Victims are often unable to reintegrate into society and are ostracized by their communities (International Center for Transitional Justice and Advocacy Forum, 2008).

The other major perpetrators in Nepal are the government security forces – the army, armed police force and other law enforcement officials. In cases documented for the period between 2001 and March 2009, the army has been the major perpetrator.²³ Soldiers often come into the villages during the night, conduct searches, harass the villagers and rape the women.²⁴ Often government forces were suspected of raping the wives of men they believed had joined the Maoists. Consequently, many young women would flee their villages and become vulnerable to rape, human trafficking and sexual exploitation.²⁵ Further, government forces have been reported to arrest and rape members of the People's Liberation Army, the armed wing of the Maoists. For instance, one of their commanders who was arrested in 2002 in the Palpa district was allegedly raped, mutilated and summarily executed.²⁶

Although Nepal is in a post-conflict situation, groups with small arms continue to fight and violence remains prevalent.²⁷ Incidents of rape and sexual violence are currently highest in the Tarai region, where historically marginalized groups such as the Madhesi people continue to campaign for greater autonomy and implementation of past agreements with the Government. More than 50 armed groups in Terai are participating in violent activities including sexual violence against women and girls.

The victims of sexual violence have alarmingly and increasingly included young girls, with 24 of the 40 cases reported to the Office of the High Commissioner for Human Rights (OHCHR) in Nepal in the year after the comprehensive peace agreement was signed relating to girls under 18 years old (OHCHR, 2007). The Informal Sector Service Centre has reported that out of the 216 cases of sexual violence reported to them in 2007, 144 were minors (INSEC, 2008a). In 2008 the Centre reported 255 cases of rape, and the youngest victim was just over two years old; some of the incidents involved Bhutanese refugees in Nepalese camps (ibid.). There has been a high level of sexual and domestic violence in the two districts of the mid western region, where 74 per cent of the 417 women who participated in a study conducted by UNFPA/IRC/SAATHI/WHR (2008) had been forced into non-consensual sexual acts multiple times.

The Government has only recently started to address the issue of protection of women's human rights and women, peace and security. The April 2008 elections of the Constituent Assembly resulted in the Maoists emerging as the majority, and a Maoist-led government was established in August 2008. The Peace and Reconstruction Ministry, formed in 2007, is the focal agency at the government level that

21 *Email communication with Joytsna Poudyal, 6 May 2009.*

22 *Interview with Narbada Chhetri, former human rights activist with INHURED, 5 May 2009*

23 *Ibid.*

24 *Ibid.*

25 *Email correspondence with Bandana Rana, SAATHI, 3 June 2009.*

26 *Email communication with Joytsna Poudyal, 6 May 2009.*

27 *Teleconference with Bandana Rana, SAATHI, 21 April 2009.*

will be evaluating all peace initiatives and reconstruction and integration processes (INSEC, 2008a). There is some awareness of UNSCR 1325 at the ministerial level. With technical support from UNIFEM, the Ministry is in the process of developing a 1325 National Action Plan and has integrated 1820 into it, but due to the turbulent political milieu and constant attrition within the government agency, the content of 1325 and 1820 has to be constantly reinforced. The Ministry also has plans to form local peace committees in all 75 districts with a minimum of 33 per cent participation by women. So far such committees have been formed in nine districts. This mechanism is expected to involve 16,000 women, and the committees will monitor the violence at the rural level and actively undertake mediation activities to establish peace (ibid).

There appears to be an informal inter-party women's caucus in the Constituent Assembly, and efforts have been made to include the prohibition of sexual violence as a fundamental right in the constitution that is due to be finalized by May 2010.²⁸ However, the challenge for women members is to work above party lines on gender equality issues and successfully lobby and campaign for the inclusion of the women's human rights benchmarks in the new constitution. The Army Integration Special Committee has also requested that the Government proceed with the discharge of 4,008 personnel, including 1,216 women, from the Maoist ranks, so that they can be rehabilitated. Furthermore, it has established a Technical Committee to support its work to supervise, integrate and rehabilitate the Maoist army combatants, a great many of whom are women.²⁹

Awareness of UN resolutions is weak at all levels including in civil society, with most rural NGOs being unaware of either 1325 or 1820.³⁰ UNIFEM has translated 1820 and disseminated it widely among stakeholders. NGOs in the capital, Kathmandu, and some UN agencies – particularly UNIFEM and the United Nations Population Fund (UNFPA) – have conducted some training and sensitization sessions on 1325 and recently included 1820 as well. This training has been targeted to the security sector (police and army), political parties, the media and organizations working on violence against women and human rights. However, there is no special focus on 1820 either at the civil society, government or security sector level.

The Government has also been derelict in providing adequate health services to survivors of rape and sexual violence. Due to poor infrastructure, physical and mental health professionals are not easily accessible to victims in rural districts.³¹ Most of the 75 districts do not have medical services (in an emergency, they can only access the regional hospital).³² Additionally, doctors often refuse to treat and examine victims if they have not been able to file a First Information Report (INSEC, 2008b). In the few instances that women are examined at hospitals, lack of adequate equipment and resources impedes the evidence collection processes (ibid.).

The justice and legal system is plagued by de facto and de jure impunity and provides very little protection or accountability for sexual violence against women. Even though Nepal has ratified the Convention Against Torture, it has still not criminalized the act of torture (Human Rights Watch, 2008). Furthermore, the statute of limitation to file the First Information Report after a rape is 35 days. The reports come with a heavy fee that victims and their families can rarely afford, and the police often refuse to file the reports and pressure the victims to withdraw their cases. Law enforcement also tends to encourage out-of-court settlements. Moreover, the terms of imprisonment for rape are very low, ranging from three to ten years (INSEC, 2008b). The law provides an additional five years for gang rape, rape resulting in pregnancy or rape of a disabled person.

Steps have been taken to address the violation of human rights by the armed forces and law enforcement,

28 *Email correspondence with Bandana Rana, SAATHI, 3 June 2009.*

29 *Ibid.*

30 *Interview with Narbada Chhetri, former human rights activist with INHURED, 5 May 2009.*

31 *Ibid.*

32 *Ibid.*

and both the police and the army have ‘human rights cells’ to investigate cases of abuse. Currently 42 districts also have special ‘women’s cells’ that are supposed to be staffed with female officers who receive special training in handling cases of sexual violence. However, these cells are poorly funded and the staff constantly faces opposition from personnel within the police departments.

Recently a number of UN agencies have started initiatives to address the high levels of sexual violence in Nepal. UNFPA is working with the Government to develop a national coordination and networking mechanism that will be led by the Ministry of Women, Children and Social Welfare and will include participation from all relevant ministerial and national bodies as well as civil society.³³ UNFPA is also planning to develop a database and information management system on gender-based violence.³⁴ In 2007–2008 it partnered with SAATHI and the International Rescue Committee to carry out field research and documentation in two districts of the mid western region.³⁵ UNFPA is also planning to map the existing health and judicial services available to victims in 12 districts and will be creating training components for law enforcements officials, lawyers, teachers and judges.³⁶

UNIFEM has taken on various initiatives in Nepal as well. It has been active in raising awareness of UNSCR 1820 through translation and printing of the resolution in Nepali and disseminating it widely among stakeholders. In partnership with the Ministry of Peace and Reconstruction, it organized two capacity-building consultations for government officials on UNSCR 1325 and 1820 and provided training to the security sector. In addition, it has entered into an agreement with the army to support awareness programmes and trainings for army personnel on sexual violence. It has also been supporting the Ministry to develop a national plan of action on UNSCR 1325 and 1820 and the National Judicial Academy to prepare guidelines for the implementation of in-camera hearings for crimes of sexual violence.³⁷ UNIFEM has also worked with SAATHI to conduct research on sexual and gender-based violence in two districts in eastern Nepal and, in partnership with civil society, launched a “White Ribbon Campaign” to raise awareness on violence against women, particularly sexual violence. Lastly, it has liaised with the Men Engage Alliance secretariat, which is a network of NGOs and UN agencies to promote the involvement of men in addressing and combating violence against women.

Currently the 1612 Taskforce, co-chaired by the United Nations Children’s Fund (UNICEF) and OHCHR, is based at the United Nations Mission in Nepal (UNMIN) to monitor and report violations against children in armed conflict, including sexual violence, within the framework of UNSCR 1612 on children and armed conflict.

Recommendations

Leading NGOs stress the importance of systematized data collection.³⁸ Given the lack of concrete data on sexual violence, it is imperative that the various UN agencies continue with their initiatives on the ground to collect this. While documentation by local NGOs shows that sexual violence has been used by parties to armed conflict against civilians, the “prevalence and trends of sexual violence” or how “widely or systematically” sexual violence has been “employed against civilians” is unknown at this stage. Cultural silence and legal impediments in effectively seeking justice for sexual violence act as barriers in collecting “timely, objective, accurate and reliable information on the use of sexual violence” during situations of armed conflict, as called for in the resolution. Perhaps the most important issue of concern is the lack of a systematic and strategic flow of information in real time to the Security Council on the situation of sexual violence in Nepal, which could potentially trigger action by the Council.

33 *Email correspondence with Bandana Rana, SAATHI, 3 June 2009.*

34 *Ibid.*

35 *Ibid.*

36 *Ibid.*

37 *Ibid.*

38 *Teleconference with Bandana Rana, SAATHI, 21 April 2009.*

Effective prevention mechanisms also need to be incorporated. Awareness about violence against women needs to be created within law enforcement agencies at the rural level so that women and their families are more easily able to file First Information Reports. Family courts that are sensitive to violence against women need to be re-established (INSEC, 2008a), and the codified laws need to be re-examined to incorporate stronger and stricter rape laws with more stringent sentencing periods and a longer statute of limitation. There is also a need to set up a truth and reconciliation commission that includes a women's committee to address the sexual violence that took place from 1996 to the present. Stronger infrastructure is needed as well, including physical and mental health services that are accessible to victims and survivors of sexual violence at the grassroots level.

7: HOPES FROM THE FIELD ON CONFRONTING SEXUAL VIOLENCE

This section outlines key issues identified by practitioners in the field that they hope to see addressed in the Secretary-General's report on resolution 1820 as well as more broadly in the implementation strategies of relevant actors who work to confront sexual violence.

- **Increasing awareness:** There is still very limited awareness of resolution 1820 within the general population, civil society and even women's NGOs and networks. This is not surprising given its relatively recent development; however, it is worth noting and monitoring to see if awareness changes, particularly as more 1325 national action plans begin to emerge. Emphasis must continue to be placed on the participation of women.
- **Timing-specific strategies:** Ideally, the report would outline the importance of developing separate strategies and policies to address sexual violence crimes occurring before, during and after conflict and which actors need to be involved in each of these scenarios. When violence occurs can help determine the type of response that will have the most impact.
- **Participation:** The standard of 30 per cent minimum female representation in national parliaments, as called for in the Beijing Platform for Action (United Nations, 1995), should be included in the report.
- **Structured commitment and leadership:** All relevant departments and agencies within the UN should commit to clear, specific and measurable targets to help achieve this agenda through a coordinated and coherent strategy. This also requires a designated lead to coordinate efforts and align strategies.
- **Structured evaluation at the UN:** NGOs strongly support the idea of establishing a permanent Working Group on Women, Peace and Security within the Security Council to ensure continuous oversight and implementation.
- **Removing obstacles to the participation of women in peace negotiations:** Resolution 1820 issues need to be included in peace negotiations, with a focus on command responsibility as well as non-state armed actors who are participants in conflict. Different approaches may be called for when negotiating with non-state actors, depending on the varying levels of insurgency.
- **A focus on prevention:** There is a clear need to focus on preventative measures rather than reactive responses, which are significantly more costly to implement in both financial and social terms.
- **Consistent and predictable funding:** Since sexual violence can occur in situations where fragile cease-fires/truces break down, this issue must be addressed in the context of peacebuilding strategies/initiatives. Substantive and predictable funding and capacity is needed to address the root causes of sexual violence and to prevent it from becoming normalized in the aftermath of conflict. However, funding tends to decrease when a country transitions from conflict to post-conflict despite evidence that post-conflict countries are particularly at risk of renewal of conflict within the first five years of peace.
- **Context-specific solutions:** In societies where the legal/judicial system does not offer a real option – for example, a woman who goes to court in Afghanistan or Darfur risks being killed on returning to her community – alternative ways of seeking justice and rehabilitation must be considered. Focus in such circumstances must be on providing immediate psychosocial support

to reintegrate survivors into their communities and on protecting them as well as human rights activists who face constant threats.

- Promote peace studies and strengthen research: More in-depth coverage of women's issues in peace studies programmes is needed so that these increasingly become part of the mainstream. There should be a more systematized approach to NGOs working in conflict environments, including the development of a common language and a common understanding of the problems and possible solutions, to facilitate on-going dialogue.
- Link UNSCR 1820 to 1325: Both resolutions are action documents and tools of accountability that oblige all stakeholders to protect women and girls, to ensure their participation in peace, recovery and construction and to promote their fundamental human rights for sustainable democratic development. The two resolutions should be implemented in concert.

8: OVERALL RECOMMENDATIONS

In general, the development of strategies to address a complex issue such as conflict-related sexual violence must be grounded in the specific circumstances of the conflict. Good practices should be shared, but policy makers and practitioners also need to learn the right lessons. What characterizes strong and inclusive strategies is the process of soliciting stakeholder input and continuously assessing the changing needs of communities. Even if the issues appear to be the same, the optimal prescription may differ significantly depending on factors such as culture, the capacity of national institutions and political will.

Nevertheless, the long-term vision for addressing sexual violence must be grounded in these fundamental goals. The following long term goals:

1. Preventing widespread violence from leading to cultures of impunity; and
2. Strengthening effective accountability mechanisms to prosecute perpetrators;

the short- and medium-term goals that should focus on five key areas:

- Providing effective protection from sexual and gender-based violence to women and communities through strengthened security sectors and law enforcement at the international and national level;
- Providing critical and immediate services such as medical, maternal, psychosocial and economic support to victims, families and communities affected by conflict in order to help them to become productive citizens in post-conflict recovery and strengthen prospects for sustainable peace;
- Increasing women's participation and recruitment at all levels of decision-making in peace processes, recovery and governance, which requires building the capacity of and empowering women and women's organizations;
- Breaking the culture of silence and challenging taboos that contribute to stigmatizing and ostracizing victims by creating awareness of crimes, strengthening policies to support victims and improve their circumstances, supporting the reintegration of victims back into communities and strengthening advocacy networks; and
- Strengthening women's economic empowerment in the aftermath of conflict in order to reduce vulnerability and strengthen participation in all aspects of public life.

The role of NGOs

Realistically, NGOs at the local level are limited in their ability to prevent and respond to conflict-related sexual violence; however, they have critical roles to play in publicizing this and advocating for other actors to intervene to help restore stability and the rule of law. It is important for NGOs to identify ways to collect and strategically disseminate complete and accurate data to the Security Council linking sexual violence to international peace. This is necessary in order to sustain political will in the international community and to lobby for effective intervention. Another important goal is developing unified responses from women through strengthened NGO networks, which have been shown to exert an important influence on governments and international policy makers in different parts of the world.

The following are some of the possible ways that NGO can contribute to help end conflict-related sexual violence. The recommendations have been broken down into three broad categories: structural changes, service provision, and advocacy and awareness.

Structural changes

- Strengthen the capacity of women's NGOs: Building the capacity of women's NGOs to address sexual violence is critical, and includes learning how to support victims, collect data, disseminate information in ways that will prompt an effective response from the international community, and advocate for women's participation.
- Develop and strengthen networks of NGOs: NGO networks such as MARWOPNET in West Africa or Rede Feto in Timor-Leste (Allden, 2007) have demonstrated that they can have influence during peace processes and in post-conflict governance. Existing networks should be strengthened and new ones should be established where they do not currently exist.
- Develop new allies among civil society groups: Women's groups should engage with other supportive civil society organizations – including, notably, men's organizations as well as under-represented groups – to help strengthen the development of strategies to counter impunity.

Services provision

- Provide critical services to women and victims: Women in conflict, and particularly victims of sexual violence, often require support services including health care and psychosocial counselling. Special attention should be paid to addressing the needs of women who have been infected with HIV or AIDS, have unwanted pregnancies due to rape, or are dealing with rape-related post-traumatic stress disorder. Other critical services include legal advice, financial support and reintegration assistance.
- Educate and empower women: Providing basic education to those who missed education opportunities due to the conflict, as well as providing training for livelihood support, can significantly help to strengthen the situation of women and can also reduce their future vulnerability.

Advocacy and awareness

- Strengthen awareness and challenge myths that lead to sexual violence: NGOs should support efforts to increase awareness of sexual violence crimes and challenge cultures of silence that allow crimes to go unpunished. It is important that communities also act to dispel any myths that contribute to sexual violence.
- Develop and disseminate context-specific good practices guides: Local organizations should develop and regularly update guides outlining good practices aimed at preventing and responding to crimes at the local and district levels of law enforcement. These guides should be disseminated to local communities to help develop community-oriented strategies aimed at preventing sexual violence.
- Advocate for legal and security sector reform: Security sector and legal bodies need to be strengthened, professionalized and sensitized to deal with sexual crimes and other forms of gender-based violence. Advocacy for judicial and legal accountability for perpetrators is important for transitional justice and future deterrence. NGOs should work with legislative bodies and UN entities that assist in restoring the rule of law and in structural reform to ensure that rape laws are strengthened.
- Collect and disseminate data and information: New strategic mechanisms need to be established to help with the collection of information on violations for the purposes of documentation and prosecution and to inform the responses and policies of the UN and other members of the international community.
- Advocate for the development of a women, peace and security national action plan: Local NGOs can use resolution 1820 to reinforce the call for country-level plans on women, peace and security to address all relevant aspects of civil life including economic development, participation, legal reform, security sector reform, health reform and other critical areas.
- Advocate for the participation of women at all levels of decision-making: NGOs should lobby for

governments to develop policies that specifically address the under-representation of women in all aspects of decision-making in public life.

- Encourage national and regional and humanitarian organizations to use UNSCR 1820 as a framework for action: NGOs can encourage national bodies, regional entities such as the African Union and international humanitarian organizations to use UNSCR 1820 as a common framework in order to guide the humanitarian response during and after conflict.

The role of the United Nations

The above responses by NGOs can support the efforts of the international community to put an end to conflict-related sexual violence. The role of the UN during and after conflict involves helping to protect the rights of women and girls through peacekeeping missions, supporting victims through service provision, and supporting policies that encourage the participation of women. The UN also has a critical role to play in strengthening state institutions in countries affected by conflict – notably the security, justice, health and education sectors – and in building the capacity of civil society organizations. The following is a non-exhaustive list of some of the ways it can help address sexual violence, broken down into structural changes, prevention and participation, and protection and response.

Structural changes

- Establish a new UN women’s entity based on the composite model: A fully funded composite entity should be established, reporting to the General Assembly, that combines normative, policy-making and operational elements.
- Appoint a Special Representative or Special Envoy: This individual would lead a coherent and strategic response on the situation of women in conflict-affected countries. This response should also include the establishment of a Security Council Working Group on Women, Peace and Security.
- Develop system-wide indicators: A set of system-wide standardized indicators should be developed that can be used by groups to demonstrate the effects of conflict-related sexual violence and its impact on international peace and security. This should also include proxy variables, such as the increase in HIV and AIDS rates or other relevant indicators, in places where data collection and reporting on sexual violence crimes is difficult or impossible.

Prevention and participation

- Enable the rapid deployment of peacekeeping forces: It is important to ensure the rapid deployment of peacekeeping personnel with adequate mandates to quickly restore stability once conflict ends in order to prevent opportunistic sexual violence becoming the norm.
- Empower missions to respond to circumstances on the ground and share good practices: The personnel on the ground are often the best positioned to effectively respond to threats. While ensuring accountability, the UN should share good practices and empower its personnel to continue to explore ways to strengthen the response.
- Strengthen grassroots intelligence on the effective protection of women: Peacekeeping missions should meet with women and women’s NGOs to gather feedback on when and in what circumstances attacks are most likely to occur in order to learn how to best protect communities at risk based on their specific circumstances. Peacekeeping, political and monitoring missions should also support NGOs through capacity building programmes to help develop and strengthen solutions for empowering and protecting communities.
- Call for the inclusion of women in peace negotiations: The UN must ensure that women are included in peace negotiations in accordance with resolution 1325. Negotiators should reiterate during peace talks that violations of the Geneva Conventions, crimes against humanity, genocide and war crimes will not be tolerated, and that perpetrators of sexual violence crimes will be

excluded from amnesty agreements.

- Challenge non-complying regimes through sanctions and other mechanisms: In countries like Sudan, where authorities argue that sexual violence is a cultural issue or a matter of feminized poverty, international actors must assert pressure to stop the violence, including through sanctions. Naming and shaming may be helpful. It is also critical to challenge the notion of sexual violence being a cultural issue.
- Support the development of policies and laws promoting gender equality: While it is up to governments to reform legal codes to address gender inequalities, the UN can assist them in ensuring that these are compatible with CEDAW, resolutions 1325 and 1820, Geneva Convention IV and other international legal instruments addressing women's rights.

Protection and response

- Increase incentives to troop and police-contributing countries to recruit and deploy women to peacekeeping missions: The UN should develop strong incentives for troop and police-contributing countries to recruit and deploy female police, troops and civilian personnel in peace operations.
- Strengthen security sector reform and law enforcement capacity building: Support for security reform initiatives in countries recovering from conflict should include the recruitment and training of women and the incorporation of a gender perspective in training, policies and programmes.
- Develop context-specific responses to provide effective protection for women: In some regions, cultural norms can put human rights workers at risk. In these circumstances, the UN must take a central role in advocating for the rights of women and should contribute to the effective protection of human rights workers who become targets of violence. While the goals remain the same in every situation, the means to achieve them will have to be tailored to the context in order to produce the most sustainable solutions.
- Strengthen the capacity of grassroots organizations: The UN should support and provide technical training to women's NGOs that work to treat victims through improved health services, psychosocial counselling, advancing the participation of women in parliament, promoting women's economic empowerment and strengthening laws that prevent discriminatory practices.
- Break the silence and challenge the myths: The UN should encourage work that breaks the silence on sexual violence crimes and help to mitigate the stigma associated with becoming a victim of sexual violence.
- Promote and encourage the use of a gender perspective: A culture of gender awareness should be instilled in peacekeepers. The cultural belief that sexual violence during wartime is an issue for the police and local law enforcement personnel should be challenged. When sexual violence is used to target civilians in order to achieve political ends, this becomes a matter for international peacekeepers.
- Enforce command responsibility: International, national and regional actors, including peace negotiators, should emphasize command responsibility. Commanders who tolerate acts of sexual violence must be held to account through disciplinary action and prosecution in the appropriate jurisdiction for failing to deter these acts. The ICC (where applicable), ad-hoc or special tribunals (such as truth and reconciliation commissions) or national court systems should prosecute war crimes, crimes against humanity, genocide and any other relevant crimes.
- Strengthen legal reform and judicial capacity: The UN should continue its work of providing support for "national authorities in re-establishing, strengthening and/or reforming judicial and legal systems and law enforcement institutions" (PBC – Working Group on Lessons Learned, 2008). The Guidance Note of the Secretary-General on the UN approach to Rule of Law Assistance calls for the UN to pay attention to the "entitlements that have been established under international law for women, children, minorities, refugees and displaced persons, and other groups that may

be subjected to marginalization and discrimination” (United Nations, n.d). The UN initiatives on assistance for the restoration of rule of law should follow DPKO guidelines and manuals, such as the Primer for Justice Components in Multidimensional Peace Operations: Strengthening the Rule of Law (UN DPKO, 2006).

The role of UN member States

Donors and conflict-affected States also have important roles to play by strengthening their structural response, practice and reactive policies. Countries emerging from conflict should use frameworks such as national action plans to guide a broader policy response, while donor states should use these plans to guide diplomacy, development and military policy. Specifically, member States should consider the following:

Operational

- Develop national action plans on women, peace and security: All countries, whether donors, developing or post-conflict should develop a national action plan that cuts across all areas of its foreign policy. This means ensuring that defence, diplomacy and development strategies all incorporate the participation of women and systematically include gender perspectives in their development.
- Increase predictability and flexibility of donor funding: Donors must ensure that adequate funds are allocated to implement policies for women’s participation in decision-making, for protection of women and girls’ rights and for support to victims, including health, psychosocial and legal services.

Prevention and participation

- Develop the capacity of legal institutions: National governments should enact laws and amend constitutions to be compatible with international legal instruments addressing women’s rights. They should strengthen the ability of women to access legal recourse, and monitor that traditional and customary practices are brought in line with international standards.
- Develop the capacity of law enforcement and the security sector: Security sector personnel must be trained and sensitized to deal with issues, including through recruitment of female officers, incorporating a gender perspective and improving forensic methodology for gathering evidence of allegations.
- Promote gender mainstreaming in all policies and programmes: Policy makers should adopt a gender perspective and actively work to dispel myths at the national level that lead to the devaluation and vulnerability of women.
- Develop policies to increasing female parliamentary representation: Targets should aim at reaching the minimum 30 per cent benchmark for women’s participation in the legislature at the national level within a specific time frame. Countries that have reached 30 per cent should work towards achieving 50 per cent.
- Develop coherent region-specific strategies on the situation of women: States should partner with regional and sub-regional bodies to develop coherent policies, activities and advocacy regarding women who are at risk or who have been victims of sexual violence. This is particularly important because of the porous nature of borders in many vulnerable parts of the world.
- Exclude perpetrators from security sector and government jobs: Armed actors should be vetted during reintegration processes to ensure that perpetrators of sexual violence crimes are not recruited into security sector or government posts. Additionally, reintegration compensation for alleged perpetrators should not be processed.³⁹

39 *Call to Action on the United Nations Security Council Resolution 1325 on Women, Peace and Security, Monrovia, Liberia, 7-8 March 2009.*

Protection and response

- Hold perpetrators accountable for their actions through aggressive prosecution: Governments must counter cultures of impunity by prosecuting those accused of crimes of sexual violence in a timely manner. Domestic prosecution of sexual violence is the first choice, but creating ad hoc tribunals following international legal standards as a mode for transitional justice is another option. Strengthening rape laws and accessibility to justice system by survivors is imperative.
- Consider establishing truth-seeking mechanisms: In some post-conflict environments, setting up TRCs, as either punitive or non-punitive mechanisms for transitional justice, is proving to be a critical tool to address continued tensions. TRCs not only have the power to create awareness about the scale and truth of violations, they also create conditions that may help to alter attitudes and corresponding behaviours of perpetrators who “open themselves up to the suffering of others and to their responsibility for their actions” (Staub et al., 2003).
- Provide protection to human rights defenders: All governments are responsible for ensuring the protection of human rights defenders who are working on the women, peace and security agenda, particularly in places where these workers become targets of violence.⁴⁰
- Implement and enforce zero-tolerance policies for members of national armed forces, security services and government: Troop and police-contributing countries must adopt stronger standards for personnel deployed for peace operations, and must develop strong accountability mechanisms when violations occur. They must also commit to prosecuting soldiers accused of such crimes.
- Support survivors of sexual violence: Donors and domestic governments should provide health services and psychosocial counselling support to survivors of sexual violence and families of victims. They should also support women’s NGOs that provide these services through financial assistance and building technical capacity.
- Support survivors and families of victims by ensuring redress and reparations: Governments should ensure that mechanisms are developed so that women who have suffered sexual violence are guaranteed redress and reparations including financial compensation. Compensation must go directly to the survivor herself.
- Rehabilitate perpetrators of sexual violence to stop cycles of violence: It is also important that perpetrators understand the consequences of their actions on victims. Without psychosocial counselling for perpetrators, there is a risk that they will continue this behaviour.
- Enforcing command responsibility: Commanders who tolerate acts of sexual violence must be held accountable through disciplinary action and prosecution in the appropriate jurisdiction for failing to deter these acts.

The role of international NGOs

NGOs at the international level should continue advocacy at the UN for a more coherent response to the situation of women around the world. Many international and national NGOs are already actively supporting the Gender Equality Architecture Reform (GEAR) campaign, which calls for the establishment of a new women’s entity in the UN characterized by both policy and operational functions.

Another way that international NGOs can help to support NGOs at the local level is to help develop a common discourse and advocacy strategy on the prevention of sexual violence. This would ideally include an advocacy tool-kit and common language for women, peace and security using resolutions 1325 and 1820 in tandem and framing them as reinforcing one another. This kit should be developed

⁴⁰ For example, in countries such as Colombia and Guatemala, human rights defenders are threatened with rape and death when they go in the field (interview with Pat Patricia Guerrero, Founder Liga de Mujeres Desplazadas and Luz Mendez, Union Nacional de Mujeres Guatemaltecas, 21 April 2009).

based on broad consultations with women's NGOs in the field.

9: CONCLUSION

Using UNSCR 1325 and 1820 in tandem

Since the adoption of resolution 1820, many NGOs – including the NGO Working Group on Women, Peace and Security – have determined that the most effective way to utilize it is as a supplement to resolution 1325 and to complement the broader agenda on women, peace and security.

Resolution 1820 strengthens 1325 by providing in some respects a more actionable mechanism for addressing sexual violence as a critical barrier to the ability of women to participate in decision-making at all levels of society. Conversely, resolution 1325 reinforces 1820 by reminding all actors of the need to include a gender perspective in post-conflict peacebuilding policies and operations, and in reiterating the need for women to actively participate as agents of peace in post-conflict societies. The preamble of 1820 specifically invokes 1325 language by “reaffirming the important role of women in the prevention and resolution of conflicts and in peacebuilding, and stressing the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security, and the need to increase their role in decision-making with regard to conflict prevention and resolution,” reinforcing the inter-connectedness of these resolutions. Resolution 1820 can thus be seen as a further tool that women’s rights organizations can use to call on States and on the international community to fulfil their obligations to women under international law.

Moving forward

Despite the initial concerns of NGOs, UNSCR 1820 shows significant potential to help change the situation of women around the world. It is encouraging to note the sustained support for increasing the participation of women not only in this resolution, but also more generally in the language of the UN in recent years.

Yet, current perceptions of the utility of this resolution vary significantly from country to country, with a critical factor being whether or not there is buy-in from the government and other key actors. For example, in Afghanistan – where rape has significantly characterized conflict for three decades and perpetrators often live in the same communities as their victims – cultural norms and the persistent threat of renewed violence reinforce the tradition of silence and denial. There are few services that might offer protection or recourse against perpetrators, and women risk being killed on returning to their villages if they do report such crimes.⁴¹ In this context, the principle of justice and combating impunity is difficult to pursue since there is a stubborn refusal to even acknowledge these crimes. It is nearly impossible to collect evidence that could prompt international action, and women who advocate for governmental accountability and women’s rights place themselves at risk of targeted violence. The recent assassination of German-Afghan women’s rights activist Sitara Achikzai (UNHCR, 2009) and the highly publicized pelting of rocks at women protesting what is being called Afghanistan’s “rape law” (as it requires wives to submit to sex every fourth night, among other things) are reminders of these real threats (Martin, 2009). It is critical to remember that there are no template solutions to addressing these issues, and that solutions must be context-specific and must be robust in order to be effective.

The ultimate success or failure of resolution 1820 also lies in the commitment and political will of all parties involved to sustain attention on sexual violence (and develop concrete preventative measures and responses) while emerging new priorities threaten to displace the issue from the agenda. There needs to be a comprehensive, coherent and well-coordinated partnership among women’s organizations and other members of civil society, UN actors and governments. A sustained communications strategy

⁴¹ *Interview with Indai Sajor, gender advisor, UNDP Afghanistan.*

targeted at different audiences is also important, not only to raise awareness of UNSCR 1820 but also to promote accountability. It should be noted that it is not just governments that need to be held accountable. Community accountability is equally important since it is often families and communities that make judgments on and disown the victims of sexual violence. Such actions contribute to the culture of silence on all forms of violence against women and continuing impunity.

In moving forward, women's organizations and advocates need to develop and ensure a consistent advocacy and implementation strategy. It is only through collective action and broad-based participation from individuals and organizations around the world that the scourge of sexual violence can be confronted, a critical barrier to the participation of women in all aspects of decision-making can be removed, the prospects for just and lasting peace in conflict-affected countries can be strengthened, and there can be meaningful representation of women in governance around the world.

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RESOURCES ON INTERNATIONAL LEGAL INSTRUMENTS AND INTERNATIONAL CRIMINAL JURISPRUDENCE ON RAPE AND SEXUAL VIOLENCE

UN Security Council Resolution 1820 recognizes that sexual violence can constitute a war crime, a crime against humanity or a constitutive act with respect to genocide. International criminal jurisprudence, over time, has come to incorporate sexual violence and rape as part of these three categories. Below is a guide on the ever evolving international legal standard on sexual violence and rape during conflict, as well as the offenses of sexual exploitation and abuse as committed by peacekeepers.

Appendix A: Evolution of Legal Instruments Preceding UNSCR 1820

The following section provides an overview of the evolution of international law regarding sexual violence in conflict.

1863 - Leiber Codes: The Codes regulated the conduct of the Union army in the U.S. Civil War, but later on strongly influenced the more codified statutes of laws of war. Also known as General Order 100, signed by President Abraham Lincoln, the Order's article 44 made rape prohibitive and punishable by the death penalty.¹ The Codes were later adopted as international law at the 1907 International Peace Conference in Copenhagen and were the bases for the rape provision in the Hague Convention IV.

Oct, 1907 - Hague Convention: Rape is not specifically enumerated in the Convention. However Article 46 on the "Laws and Customs of War on Land" calls upon parties "to respect" the "[f]amily honour and rights, the lives of persons, and private property, as well as religious convictions and practice."² It has been argued that the provision on respecting "family honour" is a reference to the prohibition of rape during war time.³

1945 - Tokyo Tribunal: The war crimes tribunal charged the crime of rape and used the language in the Hague Convention provisions relating to "family honour," to prosecute the cases.

1945 - Nuremberg Tribunal: The London Charter creating the International Military Tribunal for Nuremberg made no mention of the offense of rape.⁴ Control Council Law No. 10, the basis for prosecution of lower-level Nazis, listed rape as a crime against humanity.⁵

Oct, 1950 - Fourth Geneva Convention: The Convention deals with general protection of civilians in the hands of the enemy or under occupation during times of war; it calls on all parties in combat to distinguish between civilians and combatants, to protect civilians and to prohibit violence, cruel treatment, mutilation, torture, and outrages to personal dignity. Article 27 specifically calls upon parties to recognize that all "women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault."⁶

Mar 1976 - International Covenant on Civil and Political Rights (ICCPR): The Covenant contains no specific wording on sexual violence or rape during peace time or armed conflict. However Articles 7, 8 and 9 afford all persons the right to "liberty and security," and the right to be free of "torture," "cruel,

1 *Instructions for the Government of Armies of the United States in the Field, prepared by Francis Lieber, LL.D., Originally Issued as General Orders No. 100, art. 44, Adjutant General's Office, 1863, Washington 1898: Government Printing Office.*

2 *The Hague Convention, Laws of War : Laws and Customs of War on Land (Hague II), July 29, 1864, 32 Stat. 1803.*

3 *Theodor Meron, Rape as a Crime Under International Humanitarian Law, 87 AMJIL 424(1993).*

4 *The Charter of the Nuremberg International Military Tribunal, Aug. 8, 1945, Nazi Conspiracy and Aggression. United States Printing Office. Washington, 1946, Vol I, pp. 4-12.*

5 *Nuremberg Trials Final Report Appendix D: Control Council Law No. 10, Punishment of persons guilty of war crimes, crimes against peace and against humanity, article II, <http://avalon.law.yale.edu/imt/imt10.asp>.*

6 *The Fourth Geneva Conventions, art. 27, Aug. 12, 1949, U.N.T.S. No. 973, vol. 75, p. 287.*

inhuman or degrading treatment”, and “slavery or servitude.”⁷ The ICCPR, like any other human rights treaty, is binding on states that have ratified the treaty barring any specific reservations made.

Sept 1981 - Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW): Often described as a bill of rights for women, CEDAW addresses any and all discrimination that occurs along gender lines. Countries party to the Convention must incorporate equality into legal systems, establish an effective tribunal to investigate discrimination, and ensure elimination of discrimination in all aspects of life.⁸ The Convention contains no specific wording on sexual violence or rape during peace time or armed conflict. However Article 1 can be broadly read to include protection from rape and sexual abuse during times of conflict under the Convention’s prohibition against the “exclusion or restriction” of women on “the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women..... on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”⁹ Article 3 of the Convention can also be broadly read to demand that state parties take appropriate measures to prohibit and prevent rape and sexual violence in order to guarantee women “the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.”¹⁰

June 1987 - Convention Against Torture (CAT): The Convention contains no specific wording on sexual violence or rape during peace time or armed conflict. However Article 1 of the Convention defines torture as any “act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”¹¹ Under this definition states are obligated to take special measures and adopt laws that protect women from rape, sexual abuse and that end impunity thereof by punishing those who commit such crimes.¹²

Sept 1990 - Convention on the Rights of the Child (CRC): Article 34 of the CRC calls upon state parties to “protect the child from all forms of sexual exploitation and sexual abuse.”¹³ Article 38 extends that obligation to times of armed conflict by calling upon state parties to “ensure respect for rules of international humanitarian law applicable and relevant to the child” during armed conflict.¹⁴ This obligation includes taking “all feasible measures to ensure protection and care of children who are affected by an armed conflict.”¹⁵

May 1993- The International Criminal Tribunal for the former Yugoslavia (ICTY): Established in 1993, the ICTY was created to address the war crimes that took place during the conflicts in the Balkans in the 1990’s. The Statute of the ICTY lists rape as a crime against humanity.¹⁶ In 2000, in the cases of Kunarac, Dragoljub, Kovac, Radomir, Vukovic, Zoran (Kunarac) the accused were indicted for the mass rapes and killings in Foca. The 2001 Kunarac ruling of the ICTY, clarified the element of the actus reus (the physical act amounting to the guilty act) of rape and redefined the act of rape from the precedential definition created in the 1998 Akayesu case of the International Criminal Tribunal for Rwanda.¹⁷ Kunarac et al. defined rape as a sexual penetration, however slight, of (a) the victim’s vagina

7 *International Covenant on Civil and Political Right, art 7, 8, 9, Dec. 16, 1966, U.N.T.S. No. 14668, vol. 999 (1976), p. 171.*

8 *Convention on the Elimination of All Forms of Discrimination Against Women, 1249 UNTS 13 (1981) available at <http://www.un.org/womenwatch/daw/cedaw>.*

9 *Id. at art. 1.*

10 *Id. at art. 3.*

11 *Convention Against Torture, UN Doc. A/39/51 (1984); 1465 UNTS 85 at art. 1.*

12 *Id. at art. 2.*

13 *Convention on the Rights of the Child, 1577 UNTS 3; 28 ILM 1456 (1989) at art. 34.*

14 *Id. at art. 38.*

15 *Id.*

16 *Statute of the International Criminal Tribunal for the former Yugoslavia, art. 6 available at http://www.icty.org/x/file/Legal%20Library/Statute/statute_sept08_en.pdf.*

17 *Prosecutor v. Jean-Paul Akayesu, ¶ 598 Case No. ICTR-96-4-T Judgment, (September 2, 1998) [Stating that rape is “a physical invasion of a sexual nature committed on a person under circumstances which are coercive”].*

or anus by the perpetrator's penis or any other object used by the perpetrator, or (b) of the victim's mouth by the perpetrator's penis.¹⁸

July 1993 - The Vienna Declaration and Program of Action: This document, adopted by the Second World Conference on Human Rights, states, in paragraph 38, that "violations of the human rights of women in situations of armed conflict are violations of the fundamental principles of international human rights and humanitarian law."¹⁹

Sept 1994-Cairo Declaration and Program for Action: While the program for action does not specifically speak to sexual violence during armed conflict, Chapter IV on Gender Equality, Equity and Empowerment of Women calls upon countries to "take full measures to eliminate all forms of exploitation, abuse, harassment and violence against women, adolescents and girls." Chapter X on International Migration calls on governments "to address the root causes of movements of refugees and displaced persons by taking appropriate measures with respect to the resolution of conflict, the promotion of peace and reconciliation" and "the respect for human rights."²⁰

Sept 1995 - The Beijing Platform For Action (BPFA): The platform for action was developed at the Fourth World Conference on Women. It identifies 12 key areas of public policy with specific analysis on the impacts on women. The policy areas are power and decision-making, women's advancement, human rights, media, environment, the girl-child, the economy, armed conflict, violence against women, health care, education and training, and poverty. The policy agreement specifically enumerates that violations of "human rights of women in situations of armed conflict" in particular "murder, rape, including systematic rape, sexual slavery and forced pregnancy" are violations of the "fundamental principles of international human rights and humanitarian" and "require a particularly effective response."²¹

Sept 1998 - The International Criminal Tribunal for Rwanda (ICTR): The Statute of the ICTR lists rape as a crime against humanity²² and a prosecutorial offense under Common Article 3 of the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and Additional Protocol II thereto of 8 June 1977.²³ In the 1998 court case of the Prosecutor v. Jean Paul Akayesu, rape was defined as "a physical invasion of a sexual nature committed on a person under circumstances which are coercive."²⁴ The Akayesu trial was the first attempt at clearly defining rape during times of armed conflict under international criminal law, as well as at creating precedence for the concept of genocidal rape.²⁵ The Prosecutor v. Laurent Semanza, the tribunal added the element of mens rea or guilty mind to the act of rape.²⁶

May 2000- The Windhoek Declaration: The Namibia Plan of Action On 'Mainstreaming a Gender Perspective In Multidimensional Peace Support Operations: The Namibia Action Plan was adopted during the 'Mainstreaming a Gender Perspective in Multidimensional Peace Support Operations' seminar organized by the Lessons Learned Unit of the UN Department of Peacekeeping Operations, and hosted by the Government of Namibia, from 29 to 31 May 2000 in Windhoek, Namibia.²⁷ The Action Plan urges the Secretary-General to ensure that appropriate follow-up measures are taken to ensure the participation of women and men as equal partners and beneficiaries in all aspects of the peace process. The Action Plan calls for equal representation of men and women in peacekeeping, reconciliation and peacebuilding

18 *Kunarac et al.* ¶ 437 (IT-96-23 & 23/1) Foča (February 2001).

19 UN General Assembly, Vienna Declaration and Programme of Action, 12 July 1993, A/CONF.157/2 at ¶ 38, available at: <http://www.unhcr.org/refworld/docid/3ae6b39ec.html>.

20 Cairo Program of Action, Sept. 13, 1994 available at http://www.dirittiumani.donne.aidos.it/bibl_2_testi/d_impegni_pol_internaz/a_conf_mondiali_onu/c_conf_cairo_e+5/a_cairo_poa_engl_x_pdf/cairo_dich+pda_engl.pdf.

21 Beijing Platform for Action, UN Doc. A/CONF. 177/20 (1995) at ¶ 131-32.

22 Statute of the International Criminal Tribunal for Rwanda, U.N. Doc. ITR/3/REV.1, art. 3 (1995).

23 *Id.* at art. 4.

24 *Prosecutor v. Jean-Paul Akayesu*, ¶ 598 Case No. ICTR-96-4-T Judgment, (September 2, 1998).

25 *Id.* at 732-3.

26 *Prosecutor v. Semanza*, ¶ 346, Case No. ICTR-97-20-T Judgment and Sentence (May 2003).

27 Windhoek Declaration, available at http://www.un.org/womenwatch/osagi/wps/windhoek_declaration.pdf.

processes. Specifically, the plan calls for gender sensitizing and training on gender issues, such as sexual assault and harassment, for peacekeeping forces and personnel in mission areas. Furthermore, the plan calls for developing issues of sexual violence, in standard operating procedures, within missions.

Oct 2000 - UN Security Council Resolution 1325 (SCR 1325): The first Resolution to recognize the disproportionate impact of conflict on women, and highlight the need for stronger participation at all levels of decision-making, and the creation of prevention and protection mechanisms that enable women to exercise their rights and contribute to effective peacebuilding. The Resolution, in paragraph 10, calls on parties engaged in armed conflict to take special measures to “protect women and girls from gender based violence” during armed conflict.²⁸ Further more, paragraph 11 emphasizes the responsibility of states to “put an end to impunity and to prosecute those responsible for genocide, crimes against humanity, war crimes including those relating to sexual violence against women and girls, and in this regard, stresses the need to exclude these crimes, where feasible from amnesty provisions.”²⁹

Jan 2002-Special Court for Sierra Leone (SCSL): Established by an agreement between the United Nations and the Government of Sierra Leone pursuant to SCR 1315, the Statute of the court allows for the prosecution of rape as a crime against humanity and as a violation of common Article 3 to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977.³⁰ The most influential cases on the prosecution of rape from SCSL were the cases of Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu. In addition to the convictions on rape as a crime against humanity,³¹ the judicial bodies convicted the accused for forced marriage and sexual slavery in 2007.³²

July 2002-International Criminal Court (ICC): In 1994, the International Law Commission of the General Assembly offered a draft treaty on the creation of a permanent international criminal court that would have jurisdiction over grave violations of human rights. After much negotiation, lasting from 1996 to 1997, the Rome Statute was adopted in July 1998. The Statute creates a tribunal, the ICC, and provides details on the jurisdiction of the Court including the three crimes under which acts of grave violations of human rights can be prosecuted: crimes against humanity, genocide and war crimes.³³ The Court only has subject-matter jurisdiction over crimes committed after the Statute was entered into force. The Court has personal jurisdiction over an individual accused of these crimes if he/she is a national of a state party or a state submitting to the jurisdiction of the Court; if the crime took place on the territory of a state party or a state submitting to the jurisdiction of the court, or if the UNSC has referred the situation to the prosecutor, regardless of the nationality of the accused or the location of the crime.³⁴ Rape is prosecutable as a war crime, or as a crime against humanity.³⁵ Currently the ICC has charged Germain Katanga and Mathieu Ngudjolo with war crimes and crimes against humanity, for their use of rape as a weapon of war in inter-ethnic violence in the Ituri region of the Democratic Republic of Congo.³⁶

Oct 2005-Iraqi High Tribunal: The Statute of the Iraqi High Tribunal or the Supreme Iraqi Criminal Tribunal is based on the Rome Statute and includes rape as a prosecutable crime, under war crimes

28 *United Nations Security Council Resolution on Women Peace and Security, Oct. 31, 2000, S/RES/1325, 10.*

29 *Id.* at 11.

30 *Statute for the Special Court for Sierra Leone, art. 2-3, <http://www.sc-sl.org/LinkClick.aspx?fileticket=uClnD1MJEW%3d&tabid=200>*

31 *The Prosecutor of the Special Court v. Alex Tamba Brima, Brima Bazzy Kamara, Santigie Borbor Kanu (the AFRC accused) (Judgment). SCSL-2004-16-T at 691. Special Court for Sierra Leone. 19 July 2007, available at: <http://www.unhcr.org/refworld/docid/46a46d262.html>*

32 *Id.*

33 *Dunoff et al, International Law Norms, Actors, Process: A Problem-Oriented Approach 658 (Aspen Publishers) (2006).*

34 *<http://www.icc-cpi.int/Menus/ICC/About+the+Court/ICC+at+a+glance/Jurisdiction+and+Admissibility.htm>*

35 *Rome Statute of the International Criminal Court, art. 7 & 8, UN Doc. A/CONF. 183/9; 37 ILM 1002 (1998); 2187 UNTS 90.*

36 *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui, ICC-01/04-01/07, available at <http://www.icc-cpi.int/Menus/ICC/Situations+and+Cases/Situations/Situation+ICC+0104/Related+Cases/ICC+0104+0107/Democratic+Republic+of+the+Congo.htm>*

and crimes against humanity.³⁷ In addition to the Statute, SCR 1325, ICCPR and CEDAW are applicable under the jurisdiction of the tribunal.³⁸

Appendix B – Laws by Type of Instrument

Below is a categorization of different types of legal and policy instruments on the status of women. While the legal priority of different instruments can vary from country to country, generally speaking a country's Constitution tends to be the primary document governing the rights and obligations of the state. Secondly, treaties - of which conventions and covenants are specific types - are the clearest form of expression by states of the principles and standards of international law that need to be incorporated into national law. Treaties are binding on states that have signed and ratified them, subject to stated reservations. Treaty ratification occurs, when the national authority, usually but not always the national legislature, approves the principles of the treaties, integrating them into national laws. The role of national law varies. It may take precedence over, or be subordinate to international treaties, depending on whether or not the treaty is self-executing. Where a treaty is non self-executing, the national legislature must adopt legislation which outlines the extent to which treaty provisions are applicable under domestic law and in domestic courts.³⁹ Where a treaty is self-executing, citizens are able to directly invoke the principles of a treaty, which a state has ratified. Finally, Provincial or State laws are generally subordinate to the previous two types of laws.

On the other hand, the passing or adoption of a Security Council Resolution is binding only for members of the Council who sit on the Council when a resolution is adopted or passed. This means that aside from the Permanent 5 and the additional 10 representatives, states are not active signatories to a particular resolution. Despite this procedural distinction, all member states are nonetheless bound by the decisions of the Security Council under Article 25 of the UN Charter, which reads that "members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter." (UN Charter)

Treaties & Conventions

- 1907 – Hague Convention
- 1950 – Fourth Geneva Convention (GCIV)
- 1976 – International Covenant on Civil and Political Rights (ICCPR)
- 1979 – Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)
- 1987 – Convention against Torture (CAT)
- 1990 – Convention on the Rights of the Child (CRC)

Tribunals & Justice Mechanisms

- 1945 – Tokyo Tribunal
- 1945 – Nuremburg Tribunals
- 1993 – International Criminal Tribunal for the former Yugoslavia (ICTY)
- 1998 – International Criminal Tribunal for Rwanda (ICTR)
- 2002 – Special Court for Sierra Leone (SCSL)

International Policy Agreements

- 1993 – Vienna Declaration and Program of Action
- 1994-Cairo Declaration and Program for Action
- 1995 – Beijing Declaration and Platform for Action
- 2000 – Windhoek Declaration: The Namibia Plan of Action on Mainstreaming a Gender Perspective in Multi-dimensional Support Operations

37 *Law of the Supreme Iraqi Criminal Tribunal, No. 4006/47, Art 12 & 13 (Oct. 18, 2005) available at <http://www.ictj.org/static/MENA/Iraq/iraq.statute.engtrans.pdf>.*

38 <http://www.globaljusticecenter.net/projects/iraq/tribunal-qa.html>

39 *Dunoff et. al, International Law Norms, Actors, Process: A Problem-Oriented Approach 313 (Aspen Publishers) (2006).*

Security Council Resolutions

- Resolutions 1265 (1999), 1296 (2000), 1674 (2006), 1738 (2006) on the Protection of Civilians in Armed Conflict recognize that civilians are increasingly victims of conflict, sometimes deliberately, and that states, combatants, and all peacebuilding personnel are obligated to protect civilians from harm during the course of conflict.
- Resolutions 1261 (1999), 1314 (2000), 1379 (2001), 1460 (2003), 1539 (2004), 1612 (2005) on Children in Armed Conflict recognize the vulnerability and disproportionate effect of conflict on children during and after conflicts, and highlight the recent trend of the recruitment of child soldiers to fight in combat operations.
- Resolutions 1325 (2000) and 1820 (2008) on Women, Peace & Security recognize the disproportionate impact of conflict on women, highlight the need for stronger participation at all levels of decision-making, and the need for prevention and protection mechanisms that enable women to exercise their rights and contribute to effective peacebuilding.

Appendix C - International Criminal Jurisprudence on Rape.

Rape as a war crime started to emerge in international law after the adoption of the first formal compilation of war crimes, in the laws of war and international law, in the Hague Conventions. The word “rape” was not specifically mentioned in the text of the Convention, but scholars such as Theodor Meron, interpreted the protection of “[f]amily honour and rights, the lives of persons, and private property, as well as religious convictions and practice” in article 46 of the Hague Convention on “Laws and Customs of War on Land” to be a reference to the prohibition of rape during wartime.⁴⁰ “Family honor and rights” and “the lives of persons” was interpreted as being an effort to address the protection of the individual from rape, sexual assault or any other invasive or torturous act. The underlying assumption was that sexual violence is an affront to the moral sensibilities of “honor” amongst civilized people and, for that reason alone, should not be tolerated. However, this interpretation was seldom put into practice.⁴¹

Post WWII, codified definitions of rape started to emerge that specifically mentioned the use of rape during military conflict. The Fourth Geneva Convention in the “status and treatment of protected persons,”⁴² called for women to be “protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.”⁴³ However, by placing emphasis on the protection of the “honor” of women, the Geneva Convention continued the tradition set forth by the Hague Convention by approaching rape with a paternalistic view towards women rather than criminalizing it. The next wave of development in criminalization of rape under international law came with the prosecution of rape as a crime during the time of war in the Far East post WWII. The Tokyo Tribunals in Japan, held commanders responsible for failing to ensure that their subordinates complied with international laws prohibiting rape during military conflict.⁴⁴ Conversely, the Nuremberg Tribunal failed to prosecute the numerous rapes and sexual assaults at the command level during WWII. The Statute of the tribunal did not even enumerate rape or sexual assault as prosecutorial offenses that fall under the categories of crimes against peace, war crimes or crimes against humanity.⁴⁵

The Akayesu case of the International Criminal Tribunal of Rwanda proved to be the most precedential prosecution of rape under international criminal law. In 1998, Jean Paul Akayesu was convicted for command responsibility for the charges of crimes against humanity and genocide, including the

40 Theodor Meron, *Rape as a Crime Under International Humanitarian Law*, 87 AMJIL 424, 425 (1993).

41 *Id.*

42 *The Fourth Geneva Conventions*, art. 27, Aug., 12, 1949, U.N.T.S. No. 973, vol. 75, p. 287.

43 *Id.*

44 Meron, *supra* note 40, at 428 n. 14.

45 *The Charter of the Nuremberg International Military Tribunal*, Aug. 8, 1945, *Nazi Conspiracy and Aggression*. United States Printing Office. Washington, 1946, Vol I, pp. 4-12.

ordering of the rape and sexual assault of Tutsi women during the 1994 conflicts in Rwanda. For the first time in the history of international criminal law, rape was defined as “a physical invasion of a sexual nature, committed on a person under circumstances which are coercive.”⁴⁶ The definition was not gender specific, and thus could be applied to sexual assaults against both women and men. However, in Akayesu, the commander was only held responsible for ordering the rapes against the Tutsi women as a crime against humanity. Additionally he was held responsible for genocidal rape for the same crimes. The judicial opinion held that rape and sexual violence can amount to genocide when they are committed with the “specific intent to destroy, in whole or in part a particular group of people.”⁴⁷ The court found that the rapes were carried out with the intent to inflict “serious bodily and mental harm on the victims” committed “solely against Tutsi women” in order to destroy them and “their families and their communities.”⁴⁸ The Court ruled that the rapes were a means to destroy the spirit, the “will to live and of life itself,” of the Tutsis.⁴⁹

Kunarac of the International Criminal Tribunal of the former Yugoslavia redefined the act of rape under international criminal law. The case narrowed down the more conceptual definition of war as enumerated in Akayesu. In 2001, the judicial opinion in Kunarac imposed the element of actus reus, or the physical act amounting to the guilty act to the crime of rape. The actus reus was defined as any sexual penetration, however slight, “of (a) the victim’s vagina or anus by the perpetrator’s penis or any other object used by the perpetrator, or (b) of the victim’s mouth by the perpetrator’s penis.”⁵⁰ The burden of proof was beyond reasonable doubt.⁵¹ Consent would negate the essential element of rape. However consent for these purposes must be voluntarily given (of the victim’s free will), as assessed in the context of the surrounding circumstances.⁵²

The element of actus reus was subsequently adopted by the ICTR in the case of Prosecutor v. Semanza. Semanza further narrowed the definition by introducing the element of the mens rea (guilty mind) of rape. The court recognized that rape rose to the level of a crime against humanity when the mens rea was “to effect the prohibited sexual penetration with the knowledge that it occurs without the consent of the victim.”⁵³ The combination of the narrowly defined actus reus and mens rea from the Kunarac and the Semanza courts respectively, reversed the progress the Akayesu court had made. The narrower applications of these elements of rape de-emphasized the pervasive use of rape as a tool with which to wage war. By focusing on the elements of “penetration” and “consent” the Semanza court set a precedence of narrowing the scope of the crime of rape in international criminal law to isolated incidences. Placing emphasis on the need to prove lack of consent by the victim to the perpetrator, further disregarded the widespread and systematic use of rape as a means to create terror. Proving lack of consent with such narrow definitions becomes extremely problematic in situations of constant terror and warfare. Semanza did make provisions for the prosecution of acts of sexual violence that did not fall within the narrow definition promulgated by Kunarac, as, “other crimes against humanity... such as torture, persecution, enslavement, or other inhumane acts.”⁵⁴ However, in doing so, the court diluted the resonating effect that convictions of rape, as a crime against humanity, would have had in the efforts to end impunity and deter further use of sexual violence during armed conflict.

Convictions of forced marriage were made prominent by the Special Court for Sierra Leone, in the case of the Prosecutor v. Brima, Kamara and Kanu. The accused, members of the Alliance of the Revolutionary United Front, were held responsible for the sexual enslavement of women as “bush wives” under the

46 *Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-T Judgment, (September 2, 1998).*

47 *Id. at 731.*

48 *Id.*

49 *Id. at 732.*

50 *Kunarac et al. 13 (IT-96-23 & 23/1) Foča (February 2001).*

51 *Id. at 388.*

52 *Id. at 460.*

53 *Prosecutor v. Semanza, 346 Case No. ICTR-97-20-T (May 2003).*

54 *The Prosecutor of the Special Court v. Alex Tamba Brima, Brima Bazzy Kamara, Santigie Borbor Kanu (the AFRC accused) (Judgment). SCSL-2004-16-T at 345. Special Court for Sierra Leone. 19 July 2007, available at: <http://www.unhcr.org/refworld/docid/46a46d262.html>*

“outrages on personal dignity” category. The court, however, did not classify these as crimes against humanity, thus failing to acknowledge them as crimes of a sexual nature against women, perpetrated in a broad and systematic manner. The three were also found guilty for command responsibility as well as direct responsibility.

The prosecution had brought separate charges of sexual slavery as a crime against humanity and forced marriage under the catchall, residual clause of “other inhumane acts” under crimes against humanity. The trial court however dismissed both charges. Sexual slavery as a crime against humanity was dismissed as being redundant, as the court found that it should be dealt with, instead, as an outrage on personal dignity.⁵⁵ The court also dismissed the prosecution’s claim of forced marriage as an “other inhumane act,” of crimes against humanity.

The Prosecution argued that the forced marriage of women as bush wives differed from the crimes of rape and sexual slavery, because the rebel husbands would protect their wives from rape, even though the women were forced into an appearance of marriage by threat or other coercion. Sexual slaves were not provided that same protection, and would be made available for any rebel. Furthermore a sexual slave was not “obliged to pretend that she is the wife of the perpetrator.”⁵⁶ Thus while forced marriage could have elements of sexual violence and slavery, it involves “distinct elements” as well, according to the prosecution.⁵⁷

The Court, however, stated that in order for the offense of forced marriage to fall under the “other inhuman acts” category of crimes against humanity, it would have to have conduct not subsumed by the other categories of crimes against humanity listed in article 2 of the Statute of the Court. The prosecution, according to the Court, had failed to make a separate case for forced marriage. The elements presented for the crime of forced marriage were completely “subsumed” by the crime of sexual slavery.⁵⁸ The prosecution, according to the Court, had failed to produce evidence to “necessitate a separate crime of forced marriage.”⁵⁹ Thus by effectively dismissing these two counts, and adjudicating them under the category of “outrages on personal dignity,” as a violation of Article 3 common to the Geneva Conventions and the Additional Protocol II, the Court failed to characterize both sexual slavery and forced marriage as crimes against humanity.

The dissenting opinion cited “the crucial element of forced marriage is the imposition, by threat or physical force arising from the perpetrator’s words or other conduct, of a forced conjugal association by the perpetrator over the victim.”⁶⁰ That coupled with the fact that (i) the status of wife was imposed on women by violence or coercion, (ii) they were forced to live with men that they feared and despised, and (iii) the stigma of “bush wife” would lead to their rejection from their families and communities, thus hindering their ability to reintegrate into their communities, had fulfilled the requirement of mental, physical and moral suffering of other inhumane acts under crimes against humanity.

The majority cited that since the witnesses had failed to cite that the label of wife had caused them any particular trauma, whether physical or mental, the requirements for “other inhumane act” had not been fulfilled. While the Court could have decided not to adjudicate forced marriage under the other “inhumane” category of crime against humanity, by choosing to adjudicate it only under the category of “outrage upon personal dignity” as part of sexual slavery, the Court effectively failed to take the opportunity to set a precedent in international criminal jurisprudence of forced marriage as a crime against humanity. Thus, while the Court was revolutionary in its efforts to recognize the forced marriage of women as bush wives, its failure to definitively characterize such forced marriage as rape or sexual slavery under the Statute of crimes against humanity, de-emphasizes the pervasive and systematic

55 *Id.* at 714.

56 *Id.* at 701.

57 *Id.*

58 *Id.* at 711.

59 *Id.* at 713.

60 *Dissent by Justice Doherty, Prosecutor of the Special Court v. Brima et. al* at 53, pg 592.

sexual violence that bush wives had to suffer at the hands of their “husbands” on a daily basis.

Appendix D - The Link to Sexual Exploitation & Abuse

In the context of the DRC, the problem of widespread use of rape as a tactic of war has led to lawlessness and chaos, and perhaps, has created the conditions in which sexual exploitation and abuse (SEA) by peacekeepers has been alleged in significant numbers, starting in 2004. SEA is distinct from other forms of sexual violence because it is characterized by those who are in positions of power, eliciting sexual favors from civilians in return for services and goods provided by the UN, or other related service-providing entities.

Recognizing the risk that such violations can have in harming the UN’s reputation, the Secretary-General appointed Prince Zeid of the Permanent Mission of Jordan (a major UN troop contributing country), as his advisor on SEA. Zeid’s 2005 report identifies four key areas for improvement: implementing in-country forensic units to investigate allegations of SEA to address a gap identified by troop contributing countries (TCCs) and police contributing countries (PCCs), who cite lack of evidence in decisions for not prosecuting perpetrators; strengthening internal rules and procedures, including training and policies; strengthening individual disciplinary, criminal and legal accountability, and organizational, managerial and command responsibility for violations.

While not all countries where SEA has occurred have been preceded by widespread use of sexual violence as a tool of war, countries in which that does tend to occur, share two common characteristics: they lack effective national security sectors and they lack effective judiciaries. Widespread violence may have simply shown potential perpetrators that their actions are unlikely to be punished.

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