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Follow-up to the Fourth World Conference on Women and to the special session of the General Assembly entitled “Women 2000: gender equality, development and peace for the twenty-first century”: implementation of strategic objectives and action in critical areas of concern and further actions and initiatives

Statement submitted by Global Justice Center, a non-governmental organization in consultative status with the Economic and Social Council

The Secretary-General has received the following statement, which is being circulated in accordance with paragraphs 36 and 37 of Economic and Social Council resolution 1996/31.



Statement

Global Justice Center is an international human rights organization. It consists of international law experts with a mission to enforce international human rights and humanitarian law to advance gender equality.

The Center welcomes the priority theme of the session, elimination and prevention of all forms of violence against women and girls, and is submitting this written statement to draw the attention of the Commission to three issues impacting victims of gender-based violence, particularly victims of sexual violence in armed conflict: (a) the denial of abortion services to women raped in armed conflict in violation of the non-discrimination mandates of international humanitarian law; (b) the failure to hold States and individuals accountable for the use of sexual violence as an unlawful weapon/method of warfare; and (c) the failure to hold States and individuals accountable under international humanitarian law for use of a biological weapon through the deliberate transmission of HIV via rape in armed conflict.

Denial of abortion to girls and women raped in armed conflict

Girls and women who survive rape and forced pregnancy in armed conflicts suffer severe physical and mental injuries from the war crimes of rape, forced pregnancy and torture, and are subjected to inhuman treatment by being denied access to safe abortions in humanitarian medical settings, violating their rights under humanitarian law.

By contrast, boys and men who are “wounded and sick” in armed conflict are theoretically provided medical care in humanitarian medical settings designed to restore them to the highest level of physical and mental health. This right is withheld from women war-rape victims forced to bear the child of their rapist.

Girls and women raped in armed conflict are considered the “wounded and sick” with inalienable rights to non-discriminatory medical care under the Geneva Conventions and their Additional Protocols. International humanitarian law also stipulates that doctors treating war victims and following the rules of medical ethics are immune from prosecution under any national penal code, including laws prohibiting abortion (see Additional Protocol I, article 16 (1) and Additional Protocol II, article 10 (1)).

The Committee on the Elimination of Discrimination against Women has also recognized that denial of abortion services is discriminatory under the Convention on the Elimination of All Forms of Discrimination against Women. Specifically, general recommendation No. 24 on women and health provides that: (a) [I]t is discriminatory for a State party to refuse to legally provide for the performance of certain reproductive health services for women; and (b) that [T]he obligation to respect rights requires States parties to refrain from obstructing action taken by women in pursuit of their health goals ... include[ing] laws that criminalize medical procedures only needed by women and that punish women who undergo those procedures.

These women are also protected by the laws on torture, which apply to this situation in two ways. First, rape in war has been deemed to violate the international humanitarian law prohibitions on torture by international criminal tribunals,

including those for Rwanda and the former Yugoslavia. Accordingly, girls and women raped in armed conflict, as victims of torture, are entitled to full rehabilitative medical care, which is guided solely by medical ethics (Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment, article 14, and the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment). Second, international bodies, including the Committee against Torture and the Human Rights Committee have held that laws denying abortions for rape victims, even in life-threatening situations, violate prohibitions on torture or cruel, inhuman or degrading treatment.

The denial of abortion and the consequences of forced pregnancy must be considered in redress and reparations regimes, which has been explicitly recognized by the Special Rapporteur on violence against women, its causes and consequences. In her 2010 report, she states that reparations regimes should take into account the specific harms that are caused to women, including the costs of ongoing medical treatment, pregnancy, abortions, and raising children resulting from rape. She also notes that, to date, no reparations programme has succeeded in fully reflecting the economic impact of raising children born of rape.

Failure to ensure accountability for the use of rape as a weapon of war

Rape is now used as a weapon to kill, mutilate, destabilize enemy forces, accomplish genocide and win wars — a fact now commonly acknowledged by Governments, the United Nations, war crimes tribunals, military experts and civil society. The Security Council recognized that sexual violence in conflict is a threat to international security (Security Council resolutions 1820 (2008), 1888 (2009) and 1960 (2010)). Therefore, failure to hold culpable States accountable for use of rape as a prohibited weapon is inconsistent with global consensus and the laws of war.

However, when the laws of war were drafted, rape was not viewed as a tactic to achieve military objectives. Rather, the lawfulness of weapons relied on a premise distinguishing between combatants (men) and civilians (women, children and old men), which is less relevant in modern-day conflicts. Nonetheless, these patriarchal origins of the laws of war continue to dictate the legal culture and framework governing the lawfulness of weapons in armed conflict.

The laws of war prohibit the use of all weapons or tactics of warfare that cause superfluous injury and unnecessary suffering or violate principles of humanity and the dictates of public conscience. Yet, while rape meets these criteria and despite its endemic use, no State has ever been held accountable for the use of rape as a prohibited weapon of war nor has any commander been prosecuted for the use of an illegal weapon.

Addressing rape as a prohibited weapon will promote deterrence by changing norms that legitimize war rape. Holding culpable States accountable for use of a prohibited weapon deflates their ability to place blame for tactical mass rapes on “errant” commanders. Further, it opens other avenues of redress for war-rape victims and expands the prevention and protection framework to respond to sexual violence in conflict. Finally, treating rape as a prohibited weapon will make visible the numbers of women killed and injured by rape; global indices that track fatalities and injuries by type of weapon do not consider rape to be a weapon for these purposes.

Failure to ensure accountability for the deliberate transmission of HIV through rape in armed conflict

The World Health Organization suggests that 67 per cent of the rape survivors of the Rwandan genocide, nearly all women, contracted HIV from war rape. While not all of these transmissions resulted from a deliberate intent to transmit HIV via rape to infect “enemy women”, there are reports that Interahamwe leaders ordered HIV-infected soldiers to rape Tutsi “enemy” girls and women for this purpose.

Studies have concluded that girls and women are two to eight times more susceptible to contract HIV through intercourse than men, and rape in conflict increases women’s rate of HIV infection, especially in cases involving abduction and sexual slavery (International Women’s Health Coalition, report entitled “Women and Risk of HIV/AIDS Infection”).

The deliberate transmission of microbial or other biological agents and toxins, including the HIV virus, for hostile purposes or in armed conflict is unlawful under international law, including the 1972 Biological Weapons Convention, and customary international law. However, despite credible evidence of commanders ordering HIV-infected soldiers to rape women in order to transmit HIV, no States or individuals have been held accountable for the use of HIV as a biological weapon.

Addressing the deliberate transmission of HIV via rape is critical to deterring the use of biological weapons as a matter of global security and to establishing redress for the survivors who will suffer from lifelong disabilities from HIV and may bear HIV-infected children.

Recommendations

We encourage the Commission to take these points into consideration and to act upon its mandate to identify emerging issues, trends and new approaches to issues affecting the situation of women and make substantive recommendations as a part of the session.

The Global Justice Center makes the following recommendations to the Commission with respect to the agreed conclusions:

- (a) Multisectoral responses should ensure that girls and women have access to safe abortion services as part of their right to non-discriminatory medical care under international law;
- (b) Adopt legislation and policies that seek to hold individuals and States accountable for the use of sexual violence as a prohibited weapon/method of warfare and for the use of HIV as a biological weapon;
- (c) Ensure that the provision of humanitarian aid respects the humanitarian principles of humanity, impartiality, neutrality and independence. In particular, humanitarian aid should be provided by States without conditions that could hamper respect for humanitarian principles and international law.

We applaud the Commission’s efforts to prevent violence against women and girls, particularly by going beyond awareness-raising to working to actively transform discriminatory laws and policies.