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INTRODUCTION: MAKING THE LINK BETWEEN TRANSITIONAL JUSTICE AND CONFLICT-RELATED SEXUAL VIOLENCE

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Sexual violence is a “cheap, silent and effective” weapon used by armed groups in various kinds of conflicts in order to humiliate, terrorize, and displace civilians.¹ Although men and boys count among the victims, women and girls are disproportionately affected by crimes of conflict-related sexual violence and bear the brunt of these atrocities.²

During my two years as the first-ever U.N. Special Representative on Sexual Violence in Conflict, I met with survivors who shared terrifying stories of rape, torture, and endless suffering. Some of these stories will stay with me forever. One such narrative is of a mother who was forced to watch her seven-year-old daughter be raped by several men until the girl died.

Not only do survivors of rape endure physical and psychological suffering long after the guns have fallen silent, but often sexual violence also destroys the very fabric of society. Families are torn apart, incentives for revenge are created, and the high frequency of sexual violence often lingers in the aftermath of conflict.³

Transitional justice mechanisms are critical to combat the negative effects of conflict-related sexual violence as they aim to overcome the legacy of large-scale human rights abuses and build sustainable peace through the assurance of accountability, justice, and reconciliation.⁴ Many women who have survived horrific acts of sexual violence show remarkable courage and contribute to help end these atrocities.⁵ Transitional justice can help empower these women, for example,

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1. Margot Wallström, U.N. Special Representative on Sexual Violence in Conflict, Speech at Lund University: Conflict-Related Sexual Violence: Another Kind of War 5 (Apr. 24, 2012) [hereinafter Wallström Lund University Speech]; Margot Wallström, U.N. Special Representative of the Secretary-General, Statement at the Security Council Open Meeting on Women, Peace and Security: Sexual Violence in Situations of Armed Conflict 2 (Apr. 27, 2010) [hereinafter Wallström Security Council Statement].

2. See U.N. Secretary-General, *Conflict-Related Sexual Violence: Rep. of the Secretary-General*, ¶ 6, U.N. Doc. A/66/657-S/2012/33 (Jan. 13, 2012); Wallström Lund University Speech, *supra* note 1, at 7.

3. See, e.g., Wallström Lund University Speech, *supra* note 1, at 6.

4. See U.N. Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Rep. of the Secretary-General*, ¶ 8, U.N. Doc. S/2004/616 (Aug. 23, 2004).

5. See Margot Wallström, *A Glimmer of Hope for the Women in Congo*, HUFFINGTON POST (May 30, 2012, 11:17 AM), http://www.huffingtonpost.com/margot-wallstrom/a-glimmer-of-hope-for-the_b_1555962.html?ref=impact.

through reparations programs which can help them become real agents of change and not solely survivors of rape.⁶

Too often, however, sexual violence remains an afterthought in many transitional justice processes. Criminal courts, truth commission mandates and reparations programs have shown little regard to these violations, and there has been almost total impunity for crimes of sexual violence.⁷ One recent example is the International Criminal Court's (ICC) conviction of Congolese warlord Thomas Lubanga, which did not include charges of rape despite the many testimonies of widespread use of sexual violence by Lubanga's militia.⁸ During my visit to Colombia in May 2012, I learned that victims of sexual violence targeted by armed groups emerging post-demobilization are not eligible for reparations under the Victims and Land Restitution Law, as the government does not consider these groups to be actors in the armed conflict.⁹

If not integrated into transitional justice initiatives, sexual violence as a weapon of war can constitute an obstacle on the road to creating long-term, sustainable peace. As long as perpetrators of sexual violence continue to walk free with almost complete impunity, while survivors lack access to justice and redress, lasting peace cannot be achieved.

Conflict-related sexual violence, often called "history's greatest silence," has for too long been an ignored crime.¹⁰ The phenomenon is surrounded by several myths and misconceptions. One common notion is that conflict-related sexual violence would be an inevitable part of any conflict and considered collateral damage.¹¹ A second notion is that sexual violence is unspeakable.¹² One Libyan survivor recounted: "If the bleeding had stopped, I would never have reported it."¹³ Thirdly, rape is generally considered a lesser crime, despite the

6. See Wallström Security Council Statement, *supra* note 1, at 4; Wallström, *supra* note 5. See also Michelle Bachelet, U.N. Women Exec. Dir., 2011 Phyllis Kossoff Policy Lecture at Roosevelt House, Hunter College, New York City: Women, War and Peace (Mar. 3, 2011), available at <http://www.unwomen.org/2011/03/women-war-and-peace/> (emphasizing the positive effect of reparations on women's empowerment).

7. *Focus: The Democratic Republic of Congo: Accountability and Peace for the DRC*, INT'L CTR. FOR TRANSITIONAL JUSTICE (2008), <http://www.ictj.org/sites/default/files/ICTJ-DRC-Accountability-Peace-2008-English.pdf>.

8. See Press Release, Women's Initiatives for Gender Justice, First Sentencing Judgment by the ICC: *The Prosecutor v. Thomas Lubanga Dyilo* (July 11, 2012), available at <http://www.iccnw.org/documents/Press-Statement-on-Lubanga-Sentencing.pdf>.

9. See, e.g., AMNESTY INT'L, COLOMBIA: THE VICTIMS AND LAND RESTITUTION LAW: AN AMNESTY INTERNATIONAL ANALYSIS 6 (2012), available at <http://www.amnesty.org/en/library/asset/AMR23/018/2012/en/9cfa36ee-95c2-406b-bea0-4d5aff522d60/amr230182012en.pdf>.

10. Wallström Lund University Speech, *supra* note 1, at 3.

11. *Id.*

12. *Id.* at 4.

13. *Id.*

great suffering women and girls face.¹⁴ During the proceedings at the International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague, one Serb indicted for his role related to rape camps in Foca defended himself by saying “[b]ut I could have killed them!”¹⁵

Despite this horrific reality, there are glimmers of hope for survivors of sexual violence. Conflict-related sexual violence is now on the United Nations Security Council’s agenda and is thereby acknowledged as an international peace and security issue.¹⁶ The Security Council has adopted several resolutions on this issue in recent years, including Resolution 1820, which served as a landmark because it was the first to recognize sexual violence as a tactic of war.¹⁷ Sexual violence has also been recognized as a crime against international law through jurisprudence by international criminal tribunals as well as the Rome Statute, which established the ICC.¹⁸ The Rome Statute’s broad definition of sexual violence signifies progress, as it not only includes rape but also sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and other forms of sexual violence of comparable gravity.¹⁹ The Statute equally recognizes that sexual violence can constitute a crime against humanity and an international war crime.²⁰ With the adoption of Security Council Resolution 1960, it will be harder for impunity to reign as the Security Council has been given the necessary tools “for holding perp[e]trators of sexual violence accountable.”²¹ It is now possible for the U.N. to “name and shame” perpetrators credibly suspected of committing or being responsible for acts of sexual violence.²²

Despite the progress made, inadequate implementation of existing provisions still remains the biggest impediment to overcoming the legacy of conflict-related sexual violence. Transitional justice mechanisms constitute important tools in this regard. Three mechanisms in particular need to become more gender sensitive as they constitute vital pillars in the fight against war rape.

14. *Id.*

15. *Id.*

16. Wallström Lund University Speech, *supra* note 1, at 8. *See also Peace and Security*, U.N. GLOBAL ISSUES, <http://www.un.org/en/globalissues/peacesecurity/> (last visited Nov. 6, 2012).

17. S.C. Res. 1820, at 1, U.N. Doc. S/RES/1820 (June 19, 2008); *Peace and Security*, *supra* note 16.

18. Rome Statute of the International Criminal Court art. 1, July 17, 1998, 2187 U.N.T.S. 90, *available at* <http://treaties.un.org/doc/publication/UNTS/Volume%202187/v2187.pdf>.

19. *Id.* at art. 7(1)(g).

20. *Id.* at arts. 7(1)(g), 8(2)(b)(xxii).

21. *See* Wallström Lund University Speech, *supra* note 1, at 9.

22. S.C. Res. 1960, ¶ 3, U.N. Doc. S/RES/1960 (Dec. 16, 2010); Wallström Lund University Speech, *supra* note 1, at 9.

The first and most overriding one is criminal investigation and prosecution of leaders and perpetrators of conflict-related sexual violence in order to combat impunity for these crimes. Within my mandate as U.N. Special Representative on Sexual Violence in Conflict, I have made this fight my primary priority because it sends a strong message to perpetrators and would-be perpetrators of conflict-related sexual violence that the world is watching and that justice will ultimately prevail. Prosecution is also critical for prevention.

Impunity is regrettably still the rule rather than the exception for crimes of war rape.²³ According to U.N. estimates, between 20,000 and 50,000 women were raped in Bosnia and Herzegovina during the war.²⁴ Despite these unthinkable numbers, fewer than forty cases have been prosecuted in international and national courts combined.²⁵ The lack of capacity makes it difficult to strengthen national legal systems, and there is also a shortage of political will amongst many government officials to address this issue.²⁶ Many of them are themselves perpetrators of sexual violence crimes and have been able to reach high governmental positions due to compromises made during peace negotiations.²⁷

The international community has a great responsibility to provide assistance to strengthen national capacities and to ensure that peace agreements do not include amnesties for crimes of conflict-related sexual violence. The ICC should function as a last resort when national legal systems are unable or unwilling to bring perpetrators to justice. The ICC needs to be empowered in order to serve as a beacon in the fight against conflict-related sexual violence, despite the vigorous international legal framework already in place. Influential member states, including China and the United States, must sign the Rome Statute, and referrals to the ICC should be included in all relevant Security Council resolutions. It is time to turn theory into practice. Acts of sexual violence must lead to the cells of a prison rather than to the corridors of power.

The second pillar is reparations programs that provide support for survivors of war rape. Justice does not only mean punishment for

23. Wallström Lund University Speech, *supra* note 1, at 5.

24. *Sexual and Gender-Based Violence in Conflict: A Framework for Prevention and Response*, U.N. OFF. FOR THE COORDINATION OF HUMANITARIAN AFFAIRS, <http://ochaonline.un.org/OCHAHome/InFocus/SexualandGenderBasedViolence/AframeworkforPreventionandResponse/tabid/5929/language/en-US/Default.aspx> (last visited Nov. 6, 2012).

25. AMNESTY INT'L, OLD CRIMES, SAME SUFFERING: NO JUSTICE FOR SURVIVORS OF WARTIME RAPE IN NORTH-EAST BOSNIA AND HERZEGOVINA 4–5 (2012), available at <http://www.amnesty.org/en/library/asset/EUR63/002/2012/en/f688b1c8-1fa2-46ba-ae26-0b6ec344401f/eur630022012en.pdf>.

26. *See id.* at 4.

27. *See* U.N. Secretary-General, *supra* note 2, ¶ 64; Wallström Security Council Statement, *supra* note 1, at 2.

perpetrators but also redress for survivors. Societies cannot recover fully if women are not given help to overcome the physical and psychological trauma of being raped. In many post-conflict settings, countless women continue to live with the effects of sexual violence without access to medical, psychological, and financial assistance.²⁸ During my visit to Bosnia and Herzegovina in 2010, I met survivors of rape who were still trembling when sharing what they had endured during the war.²⁹ They continue to struggle to rebuild their scattered lives, but very little has been done to ensure their right to reparations.³⁰

It is time to place survivors at the center of all national and international strategies and actions to address conflict-related sexual violence. Survivors do not only need financial compensation but also access to health care, social services and legal support. They must be given help to reintegrate into society under reparations programs and receive official recognition as victims of war.

The third transitional justice mechanism is truth commissions, which are key to a successful reconciliation process. They can contribute to justice through investigative work, through the provision of reports and recommendations, and by acknowledging war crimes including sexual violence.³¹ Survivors have the right to find out the truth about who was responsible for the crimes committed against them. Otherwise, the lack of closure will continue to affect every aspect of their lives. One impediment to the work of truth commissions is the stigma surrounding war rape that hinders many women in talking about the atrocities.³² Governments and local and faith-based leaders have an important role to play in ending the stigma, and as such they need to start speaking up against sexual violence.

Chilean poet Pablo Neruda once said: "You can cut all the flowers, but you can't keep spring from coming."³³ This counts for all the remarkable and strong women who continue to live their lives with dreams, hopes, and aspirations despite the great suffering that they have been put through. These women are my biggest inspiration. Transitional justice mechanisms should not only ensure justice, truth and reparations, but should also give them a voice and influence. Not until then can sustainable peace be achieved.

28. *Still No Justice for Women Survivors of Wartime Rape in Bosnia and Herzegovina*, AMNESTY INT'L (Mar. 28, 2012), <http://www.amnestyusa.org/news/news-item/still-no-justice-for-women-survivors-of-wartime-rape-in-bosnia-and-herzegovina>.

29. *See Bosnia and Herzegovina: Support to the Victims of War Sexual Violence*, U.N. DEV. PROGRAMME (Nov. 26, 2010), <http://www.undp.ba/index.aspx?PID=7&RID=639>.

30. *See, e.g.*, AMNESTY INT'L, *supra* note 25, at 2.

31. *See* Cybèle Cochran, *Transitional Justice: Responding to Victims of Wartime Sexual Violence in Africa*, 9 J. OF INT'L POL'Y SOLUTIONS 33, 34 (2008).

32. *See id.*

33. JOHN OLDALE, *A WORLD OF CURIOSITIES* 54 (2012).