



**Global  
Justice Center**

Human Rights Through the Rule of Law

Submission to the Committee against Torture in relation to its examination of  
the United States of America's Third to Fifth State Party Report

**The United States' Abortion Restrictions on Foreign  
Assistance Deny Safe Abortion Services to Women and  
Girls Raped in Armed Conflict**

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## **I. Executive Summary**

This submission sets out concerns over a United States policy that results in the systematic denial of safe abortion services to girls and women raped in war in contradiction with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The policy in question is a set of abortion restrictions that the US places on all of its foreign aid, without exception, including on humanitarian assistance to war victims. As a result of the overly narrow interpretation and implementation of these restrictions, US funds cannot be used for the provision of safe abortion services to girls and women raped in war. The restrictions also act to limit and censor abortion-related speech abroad. Accordingly, this submission calls on the Committee against Torture to reaffirm that the denial of access to safe abortion services violates CAT and to recognize that US abortion restrictions on foreign assistance stand in conflict with the Convention.

## II. Introduction

In today's conflicts, sexual violence is systematically used against civilians to demoralize, terrorize, destroy, and even change the ethnic compositions of entire communities.<sup>1</sup> It has been found that the majority, in some cases over 80%, of the victims of sexual violence in conflict are children,<sup>2</sup> some as young as 3.<sup>3</sup> In Rwanda, nearly 250,000-500,000 women were raped in one hundred days as a part of the genocide in 1994.<sup>4</sup> It is estimated that 20,000 children were born from these rapes; children who are often referred to in Rwanda as "enfants mauvais souvenirs" (children of bad memories).<sup>5</sup> In Bosnia, women were held in rape camps, repeatedly raped until they became pregnant, and purposely confined until it was too late for them to obtain an abortion.<sup>6</sup>

This Committee has found that rape and sexual violence constitute forms of torture and cruel, inhuman and degrading treatment.<sup>7</sup> Similarly, the International Criminal Tribunal for the Former Yugoslavia (ICTY), in its decision in *Čelebići*, held that rape in armed conflict can constitute torture,<sup>8</sup> finding "the rape of any person to be a despicable act which strikes at the very core of human dignity and physical integrity . . . rape causes severe pain and suffering, both physical and psychological."<sup>9</sup>

One significant consequence of rape is the risk of unwanted pregnancy. For those victims who become pregnant from rape, the refusal of an abortion not only causes re-traumatization, but also severe suffering amounting to torture and cruel, inhuman and degrading treatment. The denial of abortions to raped women and girls has devastating consequences resulting in increased maternal mortality and compounds the physical, psychological, and social consequences of rape. A woman or girl who is a victim of war rape and is denied an abortion when she wants one faces one of three options: (1) undergoing an unsafe abortion; (2) carrying to term an unwanted pregnancy that increases her risk of maternal mortality and morbidity; or (3) committing suicide.

This Committee has repeatedly found that access to abortion, at least in certain circumstances, implicates the rights guaranteed by the Convention, including Articles 1, 2, 14 and 16.<sup>10</sup> This Committee has also found that impediments to safe abortion access, in particular for rape victims, lead to "grave consequences, including unnecessary deaths of women"<sup>11</sup> and that "the situation entails constant exposure to the violation committed against her and causes serious traumatic and stress and a risk of long-lasting psychological problems."<sup>12</sup> This Committee further found that CAT obliges States to take steps to "prevent acts that put women's physical and mental health at grave risk and that constitute cruel and inhuman treatment."<sup>13</sup> This includes an obligation to ensure access to safe abortion services for rape victims.<sup>14</sup>

The United States ("US"), through the State Department and the US Agency for International Development (USAID), is the largest provider of humanitarian aid in the world. The US, through funding constraints including contract provisions, restricts the provision of abortion services with its foreign assistance. As a consequence, no projects or organizations are funded that support abortion, resulting in the systematic denial of

abortion services in the vast majority humanitarian medical settings. This report focuses on how the United States' ("US") abortion restrictions on foreign assistance contradict US obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT"). We invite the Committee to reaffirm that the denial of access to safe abortion services violates CAT and to recognize that US abortion restrictions on foreign assistance stand in conflict with the Convention.

### **III. The Organizations Submitting this Report**

Created in 2005, the **Global Justice Center (GJC)** works to achieve sustainable justice, peace and security by building a global rule of law based on gender equality and universally enforced international human rights laws. Adhering to principles over politics, GJC fills a critical niche in the human rights field by serving as an unwavering voice calling for the enforcement of international legal obligations to uphold fundamental human rights. GJC works by combining advocacy with service, forging legal precedents in venues which have the greatest potential for global impact, such as the United Nations Security Council, while empowering strategic partners – including governments, women leaders, and civil society – with international law expertise and tools to embed human rights and gender equality. Based in New York City, GJC focuses on situations which present the greatest opportunity for systemic change, such as conflict and post-conflict situations and transitional democracies. Specifically, GJC’s legal projects challenge systemic discrimination in the enforcement of international law, while shaping international law to ensure gender equality. In doing so, GJC seeks to advance the integrity of our global legal system, forge new rights for women and girls, and have a direct positive impact on the rights and lives of persons who suffer from egregious human rights violations. GJC’s August 12<sup>th</sup> Campaign, created in 2010, challenges the denial of safe abortion services to women and girls raped in war and works to ensure that such services are provided in all humanitarian medical settings.

Created in 1986, the **World Organization against Torture (OMCT)** is today the main coalition of international non-governmental organizations (NGO) fighting against torture, summary executions, enforced disappearances and all other cruel, inhuman or degrading treatment. With 297 affiliated organizations in its SOS-Torture Network and many tens of thousands correspondents in every country, OMCT is the most important network of non-governmental organisations working for the protection and the promotion of human rights in the world. Based in Geneva, OMCT’s International Secretariat provides personalised medical, legal and/or social assistance to hundreds of torture victims and ensures the daily dissemination of urgent appeals across the world, in order to protect individuals and to fight against impunity. Specific programs allow it to provide support to specific categories of vulnerable people, such as women, children and human rights defenders. In the framework of its activities, OMCT also submits individual communications and alternative reports to the special mechanisms of the United Nations, and actively collaborates in the development of international norms for the protection of human rights. OMCT has previously drawn attention to the US’ problematic foreign aid restriction through a letter to President Obama.

#### **IV. US Abortion Restrictions on Foreign Assistance**

This submission focuses on the United States' ("US") policy that denies safe abortion services to women and girls raped in armed conflict and how it contradicts US obligations under CAT. This US policy consists of restrictions on abortion services and abortion-related speech that the United States Government ("USG") attaches to all of its foreign assistance, including humanitarian aid for war rape survivors in places like Syria, Nigeria and Burma.<sup>15</sup>

The US policy arises from the overly narrow administrative interpretation and implementation of congressionally-imposed restrictions on foreign aid, in particular the Helms Amendment to the Foreign Assistance Act of 1961. The Helms Amendment provides that "[n]one of the funds made available to carry this part [Part 1 of the Foreign Assistance Act] may be used to pay for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions."<sup>16</sup> The phrase "abortion as a method of family planning" is interpreted to allow, at a minimum, funding for abortions in cases of rape, incest or life endangerment.<sup>17</sup> While these restrictions are congressionally imposed, it's implementation is left to US agencies administering foreign aid, in this case the State Department and USAID.

The current interpretation of these regulations by USAID and State, eliminates the phrase "as a method of family planning," thereby eliminating any exceptions to the restrictions, including those for rape and life endangerment. As such, the restrictions as currently interpreted and implemented amount to a full ban on abortion services with US foreign aid.<sup>18</sup> The US abortion restrictions are applicable to all US foreign aid without exception<sup>19</sup> and are imposed on nearly all the major providers of medical care for war victims, including the conflict countries themselves and multilateral agencies such as the United Nations ("UN"). It should also be noted that the United Nations Population Fund ("UNFPA") is subject to a unique restriction in addition to the general restrictions discussed above: UNFPA cannot perform a single abortion, even with funds from other donors, or it will be defunded by the US entirely.<sup>20</sup>

These policies impact women on the ground in two ways. First, if a woman is able to access medical care at a facility that is funded by the US government, she will not be able to get a safe abortion. In conflict-ridden places like Congo, Central African Republic and Burma, access to medical care is limited and difficult to reach. If the only medical center to which she has access is also funded by the US, she is out of luck and is unlikely to be able to get to another facility which will provide her with a safe abortion. Second, in many cases, the US provides aid to the same medical facilities as other organizations, countries and UN agencies. As a consequence of the US funding these facilities do not perform abortions at all. Consequently, since the US is the largest bi-lateral donor of humanitarian aid in the world, this US anti-abortion policy has become the de facto medical protocol for female victims of war rape worldwide,<sup>21</sup> despite growing global consensus on the imperative to provide safe abortion services to women and girls raped in war.<sup>22</sup>

One investigation into the impact of US abortion restrictions on the ground found that:

USAID-funded organizations that address gender-based violence generally omit information about abortion from their programs. Of six interviewees involved with U.S. funded gender-based violence (GBV) programs in their organization, five do not integrate information about safe abortion into such programs. One interviewee related that while abortion comes up in their work on GBV they “cannot go there” because of the U.S. funding restrictions: ‘I think that concerning rape and GBV in countries that allow for abortion in cases of rape, we are resigned not to raise [if we get USG funding] . . . We work with the US mission in country and they don’t want us to touch it.’<sup>23</sup>

The same investigation also found that health-care providers funded by the USG generally do not provide referrals to facilities where women and girls would be able to procure an abortion and “would only provide [such] information, in the vaguest of terms, if asked directly about abortion services.”<sup>24</sup>

In addition to restricting the provision of abortion services, US policy also curtails abortion-related speech. The term “motivate,” as used in the Helms Amendment, is interpreted by the USG to prohibit virtually all public discussion of abortion and applies to “information, education, training, or communication programs” about abortion, including political speech.<sup>25</sup> Further, the Siljander Amendment prohibits the use of foreign assistance funding to lobby for or against abortion.<sup>26</sup>

The Special Rapporteur on the right to health has found that “laws prohibiting public funding of abortion care,” such as US abortion restrictions on foreign assistance, constitute a legal restriction that affects the right to sexual and reproductive health.<sup>27</sup>

The USG’s imposition of abortion restrictions on medical care for women and girls raped in war has become the subject of increasing global concern. In 2012 and 2013, the European Parliament passed two resolutions asking European Union Member States to segregate their humanitarian aid from that provided by the US due to concerns about the impact of US abortion restrictions on Member State aid.<sup>28</sup> Several countries, including the United Kingdom and the Netherlands, have engaged the US in bilateral discussions on this issue to urge policy change.<sup>29</sup> Finally, over 30 letters, representing over 3,500 groups, have been sent to President Obama urging him to ensure the rights of women and girls raped in war by taking action to lift US abortion restrictions on foreign assistance.<sup>30</sup>



## V. Denial of Abortions Causes Severe Physical and Mental Pain and Suffering

The denial of safe abortion services to war rape victims results in extended and intensified physical and psychological suffering. Increasingly, international and regional human rights bodies have recognized that the denial of abortion services and post-abortion care can cause tremendous and lasting physical and emotional suffering for rape survivors.<sup>31</sup> In fact, this Committee has affirmed that the denial of abortions may amount to torture where there is a blanket ban<sup>32</sup> and where the pregnancy is the result of rape (as is the case with the women subject to current US restrictions).<sup>33</sup>

### Severe Physical Pain and Suffering

The physical pain and suffering resulting from the denial of abortion can be so severe as to threaten the lives of impregnated war rape victims. More specifically, unwanted pregnancies from rape and the conditions imposed by war—namely malnutrition, anemia, malaria, exposure, stress, infection, disease—increase the risk of maternal mortality.<sup>34</sup> For many women, abortion is not only the preferable option but also the safer option as compared to an unwanted and dangerous pregnancy. Even outside of conflict, where women and girls face increased maternal mortality due to many factors,<sup>35</sup> childbirth is 14 times more likely to lead to death than a safe abortion.<sup>36</sup> Rape in conflict, especially when committed against children or by gang rape,<sup>37</sup> causes many physical injuries that render pregnancy and childbirth even more dangerous. For instance, a study by Harvard and Oxfam found that, “[a]lthough the risks of childbirth are real for any Congolese woman, they are significantly higher for young girls whose bodies are not mature enough for labor and delivery and for women who have serious pelvic injuries and scarring from the physical damage often caused by gang rape. While some women die during childbirth, many other women suffer non-lethal complications.”<sup>38</sup> For girls, specifically, delivery of a baby can lead to “rupture of the uterus and death of the child.”<sup>39</sup>

Further, taking note that the link between unsafe abortions and maternal mortality is well established, the denial of abortions means that war rape victims who want to terminate their pregnancy must do so by way of clandestine and dangerous services.<sup>40</sup> In short, current US restrictions on abortion and humanitarian aid elevate the risk of death for impregnated war rape survivors.

In addition to the threat of death, the denial of abortions also imposes other forms of physical pain and suffering on war rape survivors. For instance, survivors of sexual violence experience a “host of physical symptoms following rape, including pelvic, lumbar, and abdominal pain as well as reproductive abnormalities such as infertility and premature labor and delivery.”<sup>41</sup> Also, as noted above, where women are denied abortions, they may resort to “non-sterile” or “non-medical methods,” including the consumption of dangerous liquids and excessive levels of malaria medication, and the insertion of sharp objects into the vagina leading to a perforated uterus.<sup>42</sup> These methods often lead to death, infection, scarring or sterilization, hemorrhage, sepsis, poisoning, and permanent disability.<sup>43</sup> Finally,

forcing a war rape victim to continue with an unwanted pregnancy also causes a continuation, rather than alleviation, of the physical suffering from serious health conditions resulting from rape, such as traumatic fistula.

These consequences are preventable and could be directly avoided through the provision of safe abortion services.

### *Severe Mental Pain and Suffering*

War rape victims' inability to obtain an abortion can also result in severe mental pain and suffering. This Committee has found that torture can encompass the denial of abortions in the context of rape, in part due to the serious traumatic stress and risk of long-lasting psychological problems.<sup>44</sup> This finding is partly based on the acknowledgement that since women and girls who have been targeted for sexual violence experience a loss of control of their physical integrity, forcing them to carry an unwanted pregnancy to term perpetuates that loss of control and compounds the mental and emotional trauma experience by war rape victims.<sup>45</sup> Pregnancy and being forced to bear the child a rapist "prolongs the perpetrator's intrusion often causing great anguish and shame to the victim."<sup>46</sup>

This horrific situation is illustrated by the testimony of one woman to Foundation Rwanda, who was raped and impregnated during the Rwandan genocide:

When I realized I was pregnant, my first thought was that I should abort but I didn't know how to abort or where to go for such services. So I stayed with my pregnancy until I gave birth. After giving birth I thought of killing it because I was bitter and didn't know who the father is. It was painful but eventually I decided not to kill it. I have stayed with it and it is the cause of trauma to me every time I look at this boy that has no family.<sup>47</sup>

To this point, the UN Special Rapporteur on Torture has stated that, "torture, as the most serious violation of the human right to personal integrity and dignity, presupposes a situation of powerlessness, whereby the victim is under the total control of another person. Deprivation of legal capacity, when a person's exercise of decision-making is taken away and given to others, is one such circumstance . . ."<sup>48</sup> The inability to access safe abortion services does precisely that – it takes away war rape victims' decision making capability on what happens to her own person, and instead substitutes the will of the US government, through its restrictions. Such a deprivation compounds a war rape victim's sense of powerlessness and leads to immeasurable emotional suffering.

Furthermore, where women are denied access to safe abortion services and must instead seek out clandestine or unsafe services, they suffer from additional mental anguish and fear related to the dangers they face due to the "pain of unsafe treatment with uncertain outcomes, no proper aftercare and the possibility of being imprisoned if found out."<sup>49</sup>

Moreover, war rapes resulting in pregnancies carry significant social consequences, particularly for familial and communal relationships.<sup>50</sup> Many victims describe feeling stigmatized and ashamed due to bearing a child from war rape.<sup>51</sup> Impregnated war rape

victims can be up to six times as likely to be divorced as those who were not raped and may face community rejection and physical violence.<sup>52</sup> For example, in Syria, one war rape survivor committed suicide because she was unable to obtain an abortion; another died after having been thrown from a balcony by her father.<sup>53</sup>

## **VI. Growing International Recognition that War Rape Victims Require Abortion Services and that the Denial of Abortion Constitutes Torture or Cruel, Inhuman or Degrading Treatment**

In recent years, due to the increasing prioritization of preventing and responding to sexual violence in conflict, global consensus has grown around the legal and moral imperative to provide all necessary medical care, including abortion services, to war rape survivors.

In 2013, the Security Council passed two new resolutions under the Women, Peace and Security umbrella, both of which require donor States to ensure access to comprehensive and non-discriminatory medical care, including safe abortion services, and both of which were voted for by the US.<sup>54</sup> Security Council Resolution 2106 calls for all donor states to “provide non-discriminatory and comprehensive health services, including sexual and reproductive health . . . services for survivors of sexual violence . . .”<sup>55</sup> This language was adopted in reference to the following recommendation by the Secretary-General, in his annual report on sexual violence in conflict, that aid to women and girls raped in armed conflict must include safe abortion services:

Women and girls lack access to services that would allow them to safely terminate a pregnancy and are often forced to either carry out unwanted pregnancies resulting from rape or undergo dangerous abortions. Therefore, access to safe emergency contraception and services for the termination of pregnancies resulting from rape should be an integral component of any multisectoral response.<sup>56</sup>

Security Council Resolution 2122 reinforces this requirement by “*noting* the need for access to the full range of sexual and reproductive health services, including regarding pregnancies resulting from rape, without discrimination . . .”<sup>57</sup> This language was adopted in response to a recommendation by the Secretary-General to the Security Council that Member States should ensure that their humanitarian aid can be used to provide safe abortion services in compliance with the non-discrimination mandates of international law. Specifically, the Secretary-General states that Member States should

[e]nsure that humanitarian aid and funding provides for the full range of medical . . . services to victims of rape, including access to services for safe termination of pregnancies resulting from rape, without discrimination and in accordance with international human rights and humanitarian law.<sup>58</sup>

In response to these resolutions, the United Kingdom reviewed and changed its policy on humanitarian aid for women war rape victims recognizing that safe abortion services for these victims is protected under international humanitarian law (“IHL”) and that the denial would perpetuate “what amounts to inhumane treatment in the form of an act of cruel treatment or torture.”<sup>59</sup> The Netherlands and France have likewise underscored the importance of complying with this mandate under IHL.<sup>60</sup>

Furthermore, there has also been global recognition that the denial of abortion to rape victims, even outside the context of war, can constitute torture and cruel, inhuman and degrading treatment. This Committee has repeatedly voiced its concerns over laws that restrict or ban access to abortion, including for rape victims.<sup>61</sup> The Human Rights Committee (“HRC”) has found that the denial of abortion to rape victims violates Article 7 of the International Covenant on Civil and Political Rights which guarantees the right to be free from cruel, inhuman and degrading treatment.<sup>62</sup> Finally, the Special Rapporteur on Torture, in examining gender-specific forms of torture, has found that the denial of abortion can constitute a practice that amounts to torture or ill-treatment.<sup>63</sup>

The normative recognition that safe abortion services should be available to rape victims is also supported by guidelines and medical protocols on the treatment of rape victims. The World Health Organization’s (“WHO”) guidance on safe abortion provides that “the protection of women from cruel, inhuman and degrading treatment requires that those who have become pregnant as the result of coerced or forced sexual acts can lawfully access safe abortion services.”<sup>64</sup> The Inter-agency Working Group on Reproductive Health in Crises (IAWG), in its 2010 Inter-agency Field Manual on Reproductive Health in Humanitarian Settings, also classifies the denial of abortion as torture and cruel, inhuman and degrading treatment. The IAWG notes that the “denial of access to safe abortion services to women who have become pregnant as a result of rape and human trafficking violations, can constitute torture or cruel, inhuman or degrading treatment.”<sup>65</sup> Furthermore, WHO’s *Guidelines for Medico-Legal Care for Victims of Sexual Violence* states that “victims of sexual assault require comprehensive, gender-sensitive health services in order to cope with the physical and mental health consequences of their experience and to aid their recovery from an extremely distressing and traumatic event. The types of services that are needed include...abortion services.”<sup>66</sup>

## VII. US Responsibility to Prevent Torture and Ill-Treatment

US abortion restrictions on foreign assistance strongly contradict the object and purpose of CAT. The Convention set up a comprehensive scheme with the aim to ultimately end torture around the world through a broad range of measures. The Preamble makes it clear that the Convention is part of a broader effort to eradicate torture. The Preamble states that it aims “to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world.”<sup>67</sup> Numerous examples show that, however, the US’s foreign aid policy not only make the struggle against torture less effective, but actively contributes to the suffering of rape victims and thus perpetuates ill-treatment.

In fact, the US policy on aid restriction makes it virtually impossible in certain countries to access safe abortion services. These restrictions are placed not only on NGOs operating in the health-sphere, but also directly on State governments and international multilateral agencies. For example, in Darfur, where rape has been used to destroy and terrorize communities and to accomplish ethnic cleansing,<sup>68</sup> access to abortion has been found to be non-existent. In 2013, the United States provided 41.2% of all humanitarian aid to Sudan and in 2012, US aid made up 40.2% of aid.<sup>69</sup> A report on access to abortions in Sudan and Chad found that:

...the question of access to safe abortion as an option for victims of rape is not openly discussed in any health facility receiving international humanitarian assistance in Darfur, Chad or elsewhere...Humanitarian agencies seem to assume it is not essential to provide abortion services or accurate information for victims of rape in camp or IDP settings. It is likely that US government anti-abortion policies have contributed to reluctance to provide safe abortion services.<sup>70</sup> (emphasis added)

Additionally, US abortion restrictions, which apply to abortion-related speech, as well as services, also interfere with the ability of other State parties to comply with their obligations under CAT. This is because the US is the largest bilateral donor to rule of law and governance programs,<sup>71</sup> family planning and reproductive health programs,<sup>72</sup> and humanitarian assistance. Its funding conditions on abortion speech widely limit access to unbiased training and implementation of equality rights under international human rights treaties including CAT. Additionally, US abortion censorship also stifles domestic dialogue on criminal abortion laws, impeding changes required to comply with CAT.<sup>73</sup>

Further, it is important to stress that the prohibition of torture is a peremptory norm of international law (*jus cogens*).<sup>74</sup> This means that States have an obligation to eliminate all consequences of acts that are in conflict with *jus cogens*. In this context, the Vienna Convention on the Law of Treaties (“Vienna Convention”) provides that States need to bring their mutual relations into conformity with the peremptory norm.<sup>75</sup> Furthermore, the customary laws of state responsibility provide that states cannot aid or assist in

maintaining a situation that breaches a peremptory norm.<sup>76</sup> In this light, foreign aid agreements that result in a *de facto* denial of access to abortion services are problematic.

In sum, it is contrary to the object and purpose to the Convention as well as to the peremptory norm prohibiting torture if a State party to CAT impedes other States from fulfilling their convention obligations, as the US does through its blanket imposition of abortion restrictions.

## **VIII. The Denial of Abortion Services to War Rape Victims is Discriminatory**

Since only women and girls can become pregnant, restrictions that result in denial of abortion services constitutes gender-based discrimination. This Committee has specifically noted that one area in which women are particularly vulnerable to torture or ill-treatment is with respect to “medical treatment, particularly including reproductive decisions.”<sup>77</sup> Additionally, the Committee on the Elimination of all Forms of Discrimination against Women has stated that barriers to health care only needed by women, such as abortion, are discriminatory.<sup>78</sup>

Furthermore, as discussed above in Section V, in recent years the denial of abortion services to war rape victims has been found to constitute prohibited discrimination under international humanitarian law. This is because the “exclusion of one medical service, abortion, from the comprehensive medical care provided to the ‘wounded and sick’ in armed conflict...is a violation of the prohibition on ‘adverse distinction’ found in common Article 3, the Additional Protocols to the Geneva Conventions, and customary international law.”<sup>79</sup> As a result of the unavailability or denial of safe abortion services, only female war rape victims: risk physical and mental suffering or the loss of their lives; are compelled to continue a medically dangerous or unwanted pregnancy; and suffer the mental agony and physical trauma of unsafe abortions, risking their life and health in the process.

US abortion restrictions are also discriminatory as an expression of violence against women. The Special Rapporteur on Torture has stated that, “the purpose element is always fulfilled when it comes to gender-specific violence against women, in that such violence is inherently discriminatory and one of the possible purposes enumerated in the Convention is discrimination.”<sup>80</sup> Acts deliberately restraining women from having an abortion constitute violence against women by subjecting women to excessive pregnancies and childbearing against their will, resulting in increased preventable risk of maternal mortality and morbidity.<sup>81</sup> Therefore, as a form of gender-based violence, the US policy barring abortions for war rape victims discriminates against women and violates their right not to be subjected to torture and cruel, inhuman and degrading treatment.

In sum, US abortion restrictions on humanitarian aid are discriminatory in two ways. First, it directly discriminates against women by denying essential health services needed only by women. Second, it constitutes violence against women by subjecting and exposing women to unnecessary and preventable risks of maternal mortality.



## **IX. US Abortion Restrictions Deny Rehabilitation from Rape**

Article 14 of CAT requires the United States, as a State party to the Convention, to “ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.” According to this Committee “article 14 is applicable to all victims of torture and acts of cruel, inhuman and degrading treatment or punishment . . .”<sup>82</sup> The Special Rapporteur on torture has explained this to mean that the “Committee considers that the duty to provide remedy and reparation extends to all acts of ill-treatment, so that it is immaterial for this purpose whether abuses in health-care settings meet the criteria for torture per se.”<sup>83</sup>

This Committee has defined “redress” as “encompass[ing] the concepts of ‘effective remedy’ and ‘reparation’” and as “includ[ing] the following five forms of reparation: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.”<sup>84</sup>

Victims of rape in armed conflict, as torture victims,<sup>85</sup> are entitled to safe abortion as “restitution” (“a form of redress designed to re-establish the victim’s situation before the violation of the Convention was committed”<sup>86</sup>) as well as a “means for as full rehabilitation as possible.” When a woman or girl is denied an abortion and forced to either resort to unsafe abortion or bear an unwanted child—and to take on the accompanying psychological, social and financial burdens—she is prevented from returning to her prior situation before the violation and her physical and psychological rehabilitation are rendered difficult if not impossible. As described above in Section IV, for those women and girls who desire to terminate their pregnancies, safe abortion is the only avenue to full physical and psychological rehabilitation. Every other option—illegal and unsafe abortion, self-harm including suicide, or forced pregnancy and childbearing—threaten the lives and mental and physical health of women and girls. This form of rehabilitation is rendered impossible for many women and girls as a direct consequence of the US foreign aid policy.

Another necessary form of redress is a guarantee of non-repetition in the form of law reform. This Committee has, on multiple occasions, urged States parties that deny abortion to rape victims to legalize abortion at least in cases of rape, incest or the life or health of the mother.<sup>87</sup> Likewise, the Secretary-General, in his Guidance Note on reparations for conflict-related sexual violence, noted that “legislation is required to provide women and girls, who become pregnant as a result of rape, with the choice of safe and legal abortion.”<sup>88</sup> The Special Rapporteur on Violence against Women has found that the guarantee of non-repetition “offer[s] the greatest potential for transforming gender relations,” because it can fuel “broader institutional or legal reforms that might be called on to ensure non-repetition.”<sup>89</sup> In the case of rape victims denied access to safe abortion, the guarantee of non-repetition could include the repeal of criminal abortion laws, or, as in the case of the United States, administrative regulations that prevent humanitarian aid funding of abortion and lead to a situation where women and girls are denied abortions in all conflict zones.

## **X. Recommendations**

1. Urge the USG to issue an executive order to permit US foreign assistance to be used for safe abortion services in the cases of rape, life endangerment or incest in line with CAT and, in the case of women and girls raped in war, to affirm that their rights to safe abortion are governed and guaranteed by the Geneva Conventions.
2. Urge the USG to issue clear guidance regarding US abortion restrictions so that organizations and foreign governments know that they can provide information about abortion as well as abortion services to women and girls raped and impregnated in war without jeopardizing their US funding.

## XI. Endnotes

- <sup>1</sup> United Nations (“UN”) Security Council Resolution 1820, U.N. Doc. S/RES/1820 (2008) (“[W]omen and girls are particularly targeted by the use of sexual violence, including as a tactic of war to humiliate, dominate, instil fear in, disperse and/or forcibly relocate civilian members of a community or ethnic group”); International Criminal Tribunal for Rwanda, Judgment, *The Prosecutor v. Jean-Paul Akayesu*, 2 Sept. 1998 (holding that rape “was a step in the process of destruction of the Tutsi group - destruction of the spirit, of the will to live, and of life itself” and constituted “the factual elements of the crime of genocide, namely the killings of Tutsi or the serious bodily and mental harm inflicted on the Tutsi”).
- <sup>2</sup> Save the Children, *Unspeakable Crimes Against Children: Sexual Violence in Conflict*, 2013, at v.
- <sup>3</sup> Jeffrey Gettleman, *Rape Epidemic Raises Trauma of Congo War*, NY TIMES, 7 Oct. 2007.
- <sup>4</sup> Women Under Siege, *Conflict Profile: Rwanda*, available at <http://www.womenundersiegeproject.org/conflicts/profile/rwanda>; United Nations Economic and Social Council, *Report on the Situation of Human Rights in Rwanda*, U.N. Doc. E/CN.4/1996/68 (29 Jan. 1996).
- <sup>5</sup> Foundation Rwanda, *About Us*, available at <http://www.foundationrwanda.org/aboutus.aspx>; Sue Montgomery, *Rwanda: Families Born of Rape*, MONTREAL GAZETTE, 1 Apr. 2014.
- <sup>6</sup> Megan Bastick et al., *Sexual Violence in Armed Conflict: Global Overview and Implications for the Security Sector*, 2007, at 113.
- <sup>7</sup> See United Nations Committee against Torture, *General Comment 2*, U.N. Doc. CAT/C/GC/2 (2008) [hereinafter General Comment 2]; see also Felice D. Gaer, *Rape as a Form of Torture: The Experience of the Committee against Torture*, 15 CUNY L. R. 293 (2012).
- <sup>8</sup> International Criminal Tribunal for the former Yugoslavia, Judgment, *Prosecutor v. Zejnir Delalic, Zdravko Mucic, Hazim Delic and Esad Landzo* (“Čelebići” judgment), ¶¶ 495-496, Case No. IT-96-21-10, 16 Nov. 1998.
- <sup>9</sup> *Id.* at ¶ 495.
- <sup>10</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”), art. 2 and 14, 10 Dec. 1984, 1465 U.N.T.S. 85; see also Amnesty International, *The Impact of the Complete of Abortion in Nicaragua: Briefing to the United Nations Committee Against Torture*, 2009 [hereinafter CAT].
- <sup>11</sup> Committee against Torture, *Concluding Observations: Peru*, ¶ 23, U.N. Doc. CAT/C/PER/CO/4 (25 July 2006) [hereinafter CAT Concluding Observations: Peru].
- <sup>12</sup> Committee against Torture, *Concluding Observations: Nicaragua*, ¶ 16, U.N. Doc. CAT/C/NIC/CO/1 (10 June 2009) [hereinafter CAT Concluding Observations: Nicaragua].
- <sup>13</sup> CAT Concluding Observations: Peru, ¶ 23.
- <sup>14</sup> CAT Concluding Observations: Peru, ¶ 23.
- <sup>15</sup> Global Justice Center, *Lift the Ban: The Impact of US Abortion Restrictions on Kidnapped Nigerian Schoolgirls*, June 2014, available at [http://globaljusticecenter.net/index.php?option=com\\_mtree&task=att\\_download&link\\_id=420&cf\\_id=34](http://globaljusticecenter.net/index.php?option=com_mtree&task=att_download&link_id=420&cf_id=34); Global Justice Center, *How the US is Blocking Access to Safe Abortion Services for Women and Girls Impregnated by Rape in Syria*, June 2014, available at [http://globaljusticecenter.net/index.php?option=com\\_mtree&task=att\\_download&link\\_id=419&cf\\_id=34](http://globaljusticecenter.net/index.php?option=com_mtree&task=att_download&link_id=419&cf_id=34).
- <sup>16</sup> Foreign Assistance Act of 1961, Pub. L. No. 87-195, § 104(f)(1), 75 Stat. 424, as amended by the Foreign Assistance Act of 1973 (P.L. 93-189).
- <sup>17</sup> For example, the guidance issued by the Bush Administration in restoring the Mexico City Policy defined “as a method of family planning” as follows: “Abortion is a method of family planning when it is for the purpose of spacing births. This includes, but is not limited to, abortions performed for the physical or mental health of the mother, but does not include abortions performed if the life of the mother would be endangered if the fetus were carried to term or abortions performed following rape or incest (since abortion under these circumstances is not a family planning act).” United States, *Memorandum on Restoration of the Mexico City Policy*, 66 Fed. Reg. 17303, 17306 (29 Mar. 2001).
- <sup>18</sup> Global Justice Center, *Q&A: How President Obama Can – and Must – Save the Lives of Girls & Women Raped in War by Lifting the Abortion Ban Attached to Humanitarian Aid*, June 2014, available at [http://globaljusticecenter.net/index.php?option=com\\_mtree&task=att\\_download&link\\_id=413&cf\\_id=34](http://globaljusticecenter.net/index.php?option=com_mtree&task=att_download&link_id=413&cf_id=34); Ipas and the Center for Reproductive Rights, *Implementing Abortion-Related Activities Permitted by the Helms Amendment Restrictions on U.S. Foreign Assistance: Background and Recommendations*, May 2012.

<sup>19</sup> Luisa Blanchfield, *Abortion and Family Planning-Related Provisions in U.S. Foreign Assistance Law and Policy*, 2014.

<sup>20</sup> United States Consolidated Appropriations Act 2014, Pub. L. No. 113-76, §7063(d)(2), 128 Stat. 5 (17 Jan. 2014).

<sup>21</sup> See Global Justice Center, *The Right to an Abortion for Girls and Women Raped in Armed Conflict*, 2011, at 8, available at <http://globaljusticecenter.net/index.php/publications/briefs-and-white-papers/2-the-right-to-an-abortion-for-girls-and-women-raped-in-armed-conflict-february-2011>.

<sup>22</sup> See e.g., UN Security Council Resolution 2106, ¶ 19, U.N. Doc. S/RES/2106 (24 June 2013) [hereinafter UN Security Council Resolution 2106].

<sup>23</sup> Ipas, *Memorandum to Scott Radloff, Director, Office of Population and Reproductive Health, USAID on The Application of Abortion-Related Restrictions on U.S. Foreign Assistance*, at 8 (Nov. 2011).

<sup>24</sup> Ipas, *Memorandum to Scott Radloff, Director, Office of Population and Reproductive Health, USAID on The Application of Abortion-Related Restrictions on U.S. Foreign Assistance*, at 8-9 (Nov. 2011).

<sup>25</sup> US Agency for International Development, *Policy Paper – Bureau for Program and Policy Coordination, Population Assistance*, Sept. 1982, at 7.

<sup>26</sup> Siljander Amendment, FY 2006 Appropriations Act, Pub. L. No. 109-102, “Child Survival and Health Programs Fund,” 119 Stat. 2172.

<sup>27</sup> See Report of the Special Rapporteur on the right to health (Anand Grover), U.N. Doc. A/66/254, ¶ 24 (3 Aug. 2011).

<sup>28</sup> European Parliament resolution of 13 March 2012 on equality between women and men in the European Union – 2011, ¶ 61, 13 Mar. 2012 (“Reminds the Commission and the Member States of their commitment to implement UN Security Council Resolution 1325 on Women, Peace and Security, and urges the provision of EU humanitarian aid to be made effectively independent from the restrictions on humanitarian aid imposed by the USA, in particular by ensuring access to abortion for women and girls who are victims of rape in armed conflicts . . .”); European Parliament resolution of 13 June 2013 on the Millennium Development Goals – defining the post-2015 framework, ¶ 31, 13 June 2013.

<sup>29</sup> See, e.g., Questions Asked by Baroness Uddin regarding Abortion – Answered by Baroness Northover (2 Dec. 2013), available at

<http://www.publications.parliament.uk/pa/ld201314/ldhansrd/text/131202w0001.htm>; Written Parliamentary Answers from Frans Timmermans, Minister of Foreign Affairs, and Liliaane Ploumen, Minister of Foreign Trade and Development Aid, in answer to Questions from Parliament Member Sjoerd Sjoerdsma regarding Safe Abortion for Raped Women in War Zones (8 Mar. 2013), available at [http://globaljusticecenter.net/index.php?option=com\\_mtree&task=att\\_download&link\\_id=319&cf\\_id=34](http://globaljusticecenter.net/index.php?option=com_mtree&task=att_download&link_id=319&cf_id=34).

<sup>30</sup> See Global Justice Center, *Executive Order Campaign: Letters to President Obama*, <http://globaljusticecenter.net/index.php/our-work/geneva-initiative/august-12th-campaign/u-s-abortion-restrictions/letters-to-president-obama>.

<sup>31</sup> See Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, (Juan E. Méndez), ¶ 46, U.N. Doc. A/HRC/22/53 (1 Feb. 2013) [hereinafter Report of the Special Rapporteur on torture]; see also CAT Concluding Observations: Peru, ¶ 23; Committee against Torture, *Concluding Observations: Chile*, ¶ 7(m), U.N. Doc. CAT/C/CR/32/5 (14 June 2004) [hereinafter CAT Concluding Observations: Chile]; Human Rights Committee, *General Comment No. 28*, ¶ 11, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000) [hereinafter HRC General Recommendation 28].

<sup>32</sup> Committee against Torture, *Concluding Observations: Paraguay*, ¶ 22, U.N. Doc. CAT/C/PRY/CO/4-6 (14 Dec. 2011) [hereinafter CAT Concluding Observations: Paraguay].

<sup>33</sup> CAT Concluding Observations: Paraguay, ¶ 22; CAT Concluding Observations: Nicaragua, ¶ 16.

<sup>34</sup> See Harvard School of Public Health & Physicians for Human Rights, *The Use of Rape as a Weapon of War in the Conflict in Darfur, Sudan*, 20 Oct. 2004, at 20; see also Médecins Sans Frontières, *“I Have No Joy, No Peace of Mind”: Medical, Psychological, and Socio-Economic Consequences of Sexual Violence in Eastern DRC*, 2004, at 11.

<sup>35</sup> See Harvard School of Public Health & Physicians for Human Rights, *The Use of Rape as a Weapon of War in the Conflict in Darfur, Sudan*, 20 Oct. 2004, at 20.

<sup>36</sup> E.G. Raymond & D.A. Grimes, *The comparative safety of legal induced abortion and childbirth in the United States*, 199(2) OBSTETRICS AND GYNECOLOGY 215-219 (Feb. 2012).

<sup>37</sup> As is often the case in war. See Save the Children, *Unspeakable Crimes against Children: Sexual Violence in Conflict*, 2013, at v; Cassandra Clifford, Presentation at the 7th Global Conference on Violence and the Contexts of Hostility: *Rape as a Weapon of War and It's [sic] Long Term Effects on Victims and Society*, Budapest, Hungary (5 – 7 May 2008), available at <http://ts-si.org/files/BMJCliffordPaper.pdf> [hereinafter Clifford, *Rape as a Weapon of War*] (“Victims [of war rape] are often raped multiple times and gang raped, which can cause a much higher degree of physical and physiological injuries, and often lead to death.”).

<sup>38</sup> Harvard Humanitarian Initiative & Oxfam International, *Now The World Is Without Me: An Investigation Of Sexual Violence In Eastern Democratic Republic of Congo*, Apr. 2010, at 41.

<sup>39</sup> Helen Liebling, Henny Slegh, & Benoit Ruratotoye, *Women and Girls Bearing Children through Rape in Goma, Eastern Congo: Stigma, Health and Justice Responses*, Vol. IV ITUPALE ONLINE J. AFR. STUDIES 18, 25 (2012).

<sup>40</sup> See World Health Organization, *Safe abortion: Technical and Policy Guidelines for Health Systems*, 2003, at 14; see also World Health Organization, *Global and Regional Estimates of the incidence of unsafe abortion and associated mortality in 2003*, 5<sup>th</sup> ed., 2003; Médecins Sans Frontières, *Shattered Lives: Immediate Medical Care Vital for Sexual Violence Victims*, Mar. 2009, at 34.

<sup>41</sup> Harvard Humanitarian Initiative & Oxfam International, *Now the World is Without Me: An Investigation of Sexual Violence in Eastern Democratic Republic of Congo*, Apr. 2010, at 2.

<sup>42</sup> See Clifford, *Rape as a Weapon of War*, at 2.

<sup>43</sup> See *Id.*

<sup>44</sup> CAT Concluding Observations: Nicaragua, ¶16.

<sup>45</sup> See *Id.* See also Amnesty International, *The Total Ban in Nicaragua: Women's Lives and Health Endangered, Medical Professional Criminalized*, 2009, at 23.

<sup>46</sup> Jill Trenholm, *Women Survivors, Lost Children and Traumatized Masculinities: The Phenomena of Rape and War in Eastern Democratic Republic of Congo*, DIGITAL COMPREHENSIVE SUMMARIES OF UPPSALA DISSERTATIONS FROM THE FACULTY OF MEDICINE 920, 2013, at 49. See also *Id.* at 43 (“Many women told of how they were repulsed by their child born of rape, seen as representative of the perpetrator and the trauma endured.”).

<sup>47</sup> Foundation Rwanda, *Testimonies*, available at: <http://www.foundationrwanda.org/>.

<sup>48</sup> Report of the Special Rapporteur on Torture, ¶31.

<sup>49</sup> Amnesty International, *The Impact of the Complete Ban of Abortion in Nicaragua: Briefing to the United Nations Committee against Torture*, 2009, at 13.

<sup>50</sup> Physicians for Human Rights & Harvard Humanitarian Initiative, *Nowhere to Turn: Failure to Protect, Support and Assure Justice for Darfuri Women*, May 2009, at 5.

<sup>51</sup> Helen Liebling and Henry Slegh, *Bearing Children Through Rape in Eastern Congo: Community and State Responses*, Oct. 2012, at 7.

<sup>52</sup> See Physicians for Human Rights & Harvard Humanitarian Initiative, *Nowhere to Turn: Failure to Protect, Support and Assure Justice for Darfuri Women*, May 2009, at 5.

<sup>53</sup> Annick Cojean, *Syria's Silent Crime: Systematic Mass Rape*, LE MONDE, 11, Mar. 2014. See also World Health Organization and the United Nations Populations Fund, *Mental health aspects of women's reproductive health – a global review of the literature*, 2009, at 9 (Noting that “suicide is disproportionately associated with adolescent pregnancy, and appears to be the last resort from women with an unwanted pregnancy in settings where reproductive choice is limited; for example, where single women are not able to obtain contraceptives, and legal pregnancy services are unavailable.”).

<sup>54</sup> UN Security Council Resolution 2106, ¶19; and UN Security Council Resolution 2122, preamble.

<sup>55</sup> UN Security Council Resolution 2106, ¶19.

<sup>56</sup> The Secretary-General, Report of the Secretary-General on Sexual violence in conflict, ¶12, *delivered to the Security Council*, U.N. Doc. S/2013/149 (14 Mar. 2013).

<sup>57</sup> UN Security Council Resolution 2122, preamble.

<sup>58</sup> The Secretary-General, *Report of the Secretary-General on women peace and security*, ¶72(a), *delivered to the Security Council*, U.N. Doc. S/2013/525 (4 Sept. 2013).

<sup>59</sup> Department for International Development, *Safe and Unsafe Abortion - the UK's policy on safe and unsafe abortion in developing countries (a DfID Strategic Document)*, Jun. 2014, at 9.

<sup>60</sup> See Written parliamentary answers from Frans Timmermans, Minister of Foreign Affairs, and Liliaane Ploumen, Minister of Foreign Trade and Development Aid, in answer to questions from Parliament Member Sjoerd Sjoerdsma regarding safe abortion for raped women in war zones (8 Mar. 2013), available at

<http://globaljusticecenter.net/index.php/news-and-events/news1/press-releases/319-netherlands-affirms-right-of-women-raped-in-armed-conflict-to-abortions-as-part-of-necessary-medical-care-under-international-law>; Security Council, 6984th meeting, U.N. Doc. S/PV.6984 (24 Jun. 2013), at 48 (statement by Netherlands); Security Council, 7160th meeting, U.N. Doc. S/PV.7160 (25 Apr. 2014), at 15 (statement by France).

<sup>61</sup> See CAT Concluding Observations: Peru, ¶23; CAT Concluding Observations: Chile, ¶17; CAT Concluding Observations: Paraguay, ¶22; and CAT Concluding Observations: Nicaragua, ¶16.

<sup>62</sup> HRC General Recommendation 28, ¶11 (Stating that in order for the HRC to assess compliance with article 7, the Committee needs to “know whether the State party gives access to safe abortion to women who have become pregnant as a result of rape”).

<sup>63</sup> Report of the Special Rapporteur on torture, ¶¶ 45-50.

<sup>64</sup> World Health Organization, *Safe abortion: technical and policy guidance for health systems* (2<sup>nd</sup> ed.), 2012 at 92.

<sup>65</sup> Inter-Agency Working Group on Reproductive Health in Crises, *Inter-agency Field Manual on Reproductive Health in Humanitarian Settings (2010 Revision) - Chapter 7: Comprehensive Abortion Care*, 2010, at 166.

<sup>66</sup> World Health Organization, *Guidelines for Medico-Legal Care for Victims of Sexual Violence*, pg. 2 (2003).

<sup>67</sup> CAT, preamble.

<sup>68</sup> Women Under Siege, *Conflict Profile: Darfur-Sudan*, available at

<http://www.womenundersiegeproject.org/conflicts/profile/darfur-sudan> (finding that “There have been many reports of ethnic slurs being made during rape as well as stated intentions to impregnate women and force “mixed” babies. The U.N. defines ethnic cleansing as “a purposeful policy designed by one ethnic or religious group to remove by violent and terror-inspiring means the civilian population of another ethnic or religious group from certain geographic areas.” We are using the term here because ethnic cleansing not only makes women subject to outright murder, but also controls the threat of their bodies as the means of reproduction. For instance, women have been raped in order to occupy “inferior” wombs with “superior” sperm, or forced to have abortions or sterilizations (as have men of “inferior” groups) in order to end future reproduction.”).

<sup>69</sup> Financial Tracking Service, *Sudan Emergencies 2013: Total Humanitarian Funding per Donor in 2013*, available at: [http://fts.unocha.org/reports/daily/ocha\\_R24c\\_C200\\_Y2013\\_asof\\_1410171720.pdf](http://fts.unocha.org/reports/daily/ocha_R24c_C200_Y2013_asof_1410171720.pdf); and Financial Tracking Service, *Sudan Emergencies 2012: Total Humanitarian Funding per Donor in 2012*, available at: [http://fts.unocha.org/reports/daily/ocha\\_R24c\\_C200\\_Y2012\\_asof\\_1410171720.pdf](http://fts.unocha.org/reports/daily/ocha_R24c_C200_Y2012_asof_1410171720.pdf).

<sup>70</sup> Tamara Fetters, *Abortion Care Needs in Darfur and Chad*, FORCED MIGRATION REVIEW, 3 May 2006, at 25.

<sup>71</sup> United States Agency for International Development, *DCHA/DG User’s Guide to DG Programming*, Nov. 2010, available at [http://pdf.usaid.gov/pdf\\_docs/Pnadx833.pdf](http://pdf.usaid.gov/pdf_docs/Pnadx833.pdf).

<sup>72</sup> United States Mission on the United Nations, *Non-paper by the United States of America, on the Report of the Secretary General on the Flow of Financial Resources for Assisting in the Implementation of the Programme of Action of the International Conference on Population and Development in the United Nations Economic and Social Council Commission on Population and Development*, 42nd Sess. (Mar. 30, 2009), available at: <http://usun.state.gov/briefing/statements/2009/march/131657.htm>.

<sup>73</sup> See CAT Concluding Observations: Peru, ¶23; CAT Concluding Observations: Paraguay, ¶22; and CAT Concluding Observations: Nicaragua, ¶16.

<sup>74</sup> See e.g. Committee against Torture, *Concluding Observations: Spain*, ¶ 21, U.N. Doc. CAT/C/ESP/CO/5 (9 Dec. 2009). See also Erika de Wet, *The Prohibition of Torture as an International Norm of jus cogens and Its Implications for National and Customary Law*, 15 EUR. J. INT’L. L. 97 (2004).

<sup>75</sup> Vienna Convention on the Law of Treaties, art. 71, May 23, 1969, 1155 U.N.T.S. 331.

<sup>76</sup> Draft Articles on Responsibility of States for internationally wrongful acts, (International Law Commission, 53rd Session, 2001), commentary art. 41, ¶ 5.

<sup>77</sup> General Comment No. 2, ¶23.

<sup>78</sup> Committee on the Elimination of All Forms of Discrimination against Women, *General Recommendation 24*, ¶ 14. U.N. Doc. A/54/38/Rev.1 (1999).

<sup>79</sup> Letter from Professor Louise Doswald Beck (former Legal Advisor to the International Committee of the Red Cross), to President Barack Obama (10 Apr. 2013), available at [http://globaljusticecenter.net/index.php?option=com\\_mtree&task=att\\_download&link\\_id=321&cf\\_id=34](http://globaljusticecenter.net/index.php?option=com_mtree&task=att_download&link_id=321&cf_id=34).

<sup>80</sup> Report of the Special Rapporteur on torture, ¶37.

<sup>81</sup> Report of Special Rapporteur on violence against women, its causes and consequences, (Ms. Radhika Coomaraswamy), ¶57, U.N. Doc. E/CN.4/1999/68/add.4 (21 Jan. 1999).

<sup>82</sup> United Nations Committee against Torture, *General Comment 3*, ¶ 1, U.N. Doc. CAT/C/GC/3 (2012) [hereinafter General Comment 3].

<sup>83</sup> Report of the Special Rapporteur on torture, ¶84.

<sup>84</sup> General Comment No. 3, ¶¶ 2, 6.

<sup>85</sup> See International Criminal Tribunal for the former Yugoslavia, *Prosecutor v. Zdravko Mucić, Hazim Delić, Esad Landžo & Zejnil Delalić (Čelebići Camp)*, Appeals Chamber Judgement of 20 February 2001, IT-96-21, ¶ 501 (finding that a woman prisoner's rape, which was committed by an armed official with "discriminatory intent" and which "caused [her] severe mental and physical pain and suffering," constituted torture); Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, (Manfred Nowak), U.N. Doc. A/HRC/7/3, 15 Jan. 2008, ¶ 36 (noting that "rape can cause suffering that even go[es] beyond the suffering caused by classic torture . . . [including because rape victims] may experience unwanted pregnancies, miscarriages, forced abortions or denial of abortion") (internal citations omitted).

<sup>86</sup> General Comment No. 3, ¶ 8.

<sup>87</sup> See CAT Concluding Observations: Peru, ¶23; CAT Concluding Observations: Paraguay, ¶22; and CAT Concluding Observations: Nicaragua, ¶16.

<sup>88</sup> The Secretary-General, *Guidance Note of the Secretary-General: Reparations for Conflict-Related Sexual Violence*, Jun. 2014, at 20.

<sup>89</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, (Rashida Manjoo), ¶ 62, U.N. Doc. A/HRC/14/22 (19 Apr. 2010).