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Addressing Sexual Violence in Internationally Mediated Peace Negotiations

ROBERT JENKINS and ANNE-MARIE GOETZ

Negotiated peace agreements rarely address the legacy of wartime sexual violence committed by state and non-state armed actors, even in cases where mass rape has been a prominent feature of the conflict. This article examines why this has been the case. It assesses the implications of UN Security Council resolution 1820 (June 2008), which calls for internationally mediated peace talks to address conflict-related sexual violence; advances reasons why doing so may contribute to more durable peace; and outlines where specific textual references to sexual violence in peace agreements could enhance the well-being of survivors and reduce the chances of brutal and widespread sexual violence persisting in the post-conflict period. The article focuses on five types (or elements) of peace agreement: (1) early-stage agreements covering humanitarian access and confidence-building measures; (2) ceasefires and ceasefire monitoring; (3) arrangements for demobilization, disarmament and reintegration (DDR) and longer-term security sector reform (SSR); (4) post-conflict justice institutions; and (5) provisions relating to reparations for victims of serious human rights abuses.

If sexual violence is not addressed squarely in ceasefires and peace processes, there will be no peace for women.

Jan Egeland¹

In June 2008, the UN Security Council unanimously passed resolution 1820, which recognized conflict-related sexual violence as a tactic of war and a matter of international peace and security. It calls on parties to armed conflict, including non-state actors, to protect civilians from sexual violence, enforce military discipline, uphold command responsibility and assist the prosecution of perpetrators. It also directs the UN's various departments and specialized agencies to ensure that peacekeeping forces are adequately equipped and trained to protect civilians from sexual violence.

In contrast to the humanitarian approach that has long characterized the UN's response to conflict-related sexual violence, resolution 1820 reclassifies sexual violence as a security issue that requires changes in peacekeeping doctrine and tactics. Beyond peacekeeping, resolution 1820 has implications for peacemaking, the process of resolving armed conflict through mediated peace talks. Peacemaking is relevant to the prevention of, and response to, sexual violence because of the influence a peace agreement can have on the structure of a UN peacekeeping mission and the environment within which post-conflict reconstruction and development – or peacebuilding – takes place. Resolution 1820 specifically asks the

Secretary-General to encourage envoys engaged in conflict mediation to address the issue of sexual violence.

This article discusses why peace agreements can and should deal – comprehensively and systematically – with conflict-related sexual violence. It draws on material collected and analysed in the preparatory process leading up to a Colloquium held in New York in June 2009 in which mediators and policymakers discussed the relative lack of attention to sexual violence in peace processes and accords.² The article assesses the consequences of failing to address sexual violence in mediation processes, based partly on an analysis of post-Cold-War peace agreements. It argues for including specific textual provisions related to sexual violence in five types (or elements) of peace agreements: (1) ‘early-stage agreements’ covering humanitarian access and/or confidence-building measures; (2) ceasefires and ceasefire monitoring; (3) disarmament, demobilization and reintegration (DDR) and security sector reform (SSR); (4) post-conflict justice; and (5) reparations for victims of serious human rights abuses. The article concludes by discussing both the constraints posed by the nature of conflict-related sexual violence and opportunities for using the broader peace process through which agreements are forged to address the complex legacies of conflict-related sexual violence.

Why Peace Agreements Should Address Conflict-Related Sexual Violence

Because conflict-related sexual violence has conventionally been seen as a somewhat random and opportunistic act, committed by undisciplined soldiers exploiting the chaos of war – or as a legitimate spoil of war – it has largely been ignored in peace talks, war crimes tribunals and frameworks for post-conflict reconstruction and development. A review of 300 peace agreements in 45 conflicts from 1989 to 2008 found that only 18 accords, relating to just ten conflicts, mention sexual violence or other forms of gender-based violence.³ The ten conflicts are Burundi, Indonesia (Aceh), the Democratic Republic of Congo (DRC), Sudan (South), Sudan (Darfur), Nepal, the Philippines, Uganda, Guatemala and Mexico (Chiapas). The review found that even in contexts where sexual violence has plainly been used as a means of prosecuting the conflict by one or both sides, peace accords often make no mention of the subject. Of the 18 agreements that mention sexual or gender-based violence, six were ceasefires: Burundi, Aceh, Democratic Republic of Congo, Sudan (South), Sudan (Darfur) and Nepal. Only two peace agreements (Democratic Republic of Congo 2003 and Uganda 2007) include reference to sexual violence in the justice chapter. In four agreements sexual violence is mentioned in relation to rule of law and human rights: Guatemala 1995 and 1996, Mexico (Chiapas) 1996 and the Philippines 1998. In two agreements it appears within provisions dealing with security arrangements: Sudan (Darfur) 2006 and Nepal 2006. In two agreements sexual violence is mentioned in relation to DDR: Democratic Republic of Congo 2003 and Uganda 2008. In no cases were there special provisions requiring attention to sexual violence in reparations, economic recovery or development measures.

Why should peace agreements contain specific provisions related to sexual violence? A conflict’s conclusion should, in theory, bring an end to all conflict-

related violence, including sexual violence. But this is often not the case. One reason is that, without specific provisions related to sexual violence, those who implement peace agreements face fewer incentives to ensure that it is adequately addressed. Peacekeepers, for instance, will not necessarily interpret their mandates as requiring them proactively to protect civilians from 'post-conflict' sexual violence unless doing so is specifically mentioned in the rules of engagement, which derive substantially from the peace accord's terms and implementation modalities. For instance, if sexual violence has not been specifically identified as a feature of the conflict, peacekeepers are unlikely to have received the equipment or training necessary to prevent widespread or systematic sexual violence. Prosecutors may not feel compelled to prioritize cases against suspected perpetrators. Policymakers charged with designing and administering reparations and recovery programmes may not recognize the specific needs of sexual violence survivors or steer resources to them.

Parties to conflict rarely raise, let alone prioritize, sexual violence in peace negotiations. In some cases, there is a pervasive sense of denial, either because sexual violence is regarded as a natural, if unfortunate, byproduct of war, destined to wane when a deal is struck and conflict ends, or because parties to a conflict collude in the fiction that not much sexual violence – or at least none that was commanded or condoned by military leaders – occurred in any case. Often both government and rebel fighters have committed sexual violence, creating a strong incentive for all parties to engage in a mutually beneficial conspiracy of silence. When just one side has been primarily responsible for sexual violence, as was allegedly the case in the conflicts of El Salvador and Guatemala in the 1990s,⁴ the opposing side has an interest in raising the issue in the talks. The norm, however, has been expressed through either silence on the issue or amnesties for this human rights violation. As Don Steinberg put it, in peace talks 'men with guns forgive other men with guns for crimes against women'.⁵

Indeed, the striking absence of women from conflict resolution processes, despite the fact that Security Council resolution 1325 (2000) mandates the inclusion of women in all aspects of peacemaking, peacekeeping and peacebuilding, helps to explain why peace agreements are generally silent on sexual violence. A review of 24 major peace processes since 1992 found that just 2.1 per cent of signatories to peace deals were women; that women's participation in negotiating delegations averaged 7.1 per cent in the 14 cases for which such information was available; and that no women have been appointed chief or lead peace mediators in UN-sponsored peace talks.⁶

If parties to peace talks ignore the issue of sexual violence, if domestic constituencies demanding attention to this issue are weak or silenced by the stigma associated with these crimes, and if international attention to the issue and financing for sexual-violence prevention, prosecution, and services for survivors is inconsistent, it is hardly surprising that the issue is neglected at the crucial moment of negotiating the peace. In such contexts, the role of international mediators is particularly important.

The mediator's primary objective is to bring about a peace agreement of sufficient durability to ensure the non-recurrence of systematic conflict. This requires

the mediator to address the points of disagreement between the negotiating parties, whether or not these are the underlying sources of conflict. He or she must also ensure respect for international law, address the concerns of neighbouring states and those with influence in a given region and be on guard against negotiating parties who use the cover of mediation to advance their military objectives by, for instance, manipulating humanitarian relief supplied under the terms of a ceasefire.

Mediators are generally perceived as most effective in securing an agreement if they enter a negotiation with no identifiable agenda of their own. For this reason, there is resistance to the idea of burdening mediators with a mandate to address sexual violence – or any other issue. If sexual violence is integral enough to a given conflict, according to this logic, it will naturally enter the negotiating agenda. There are, however, counter-arguments that may help to persuade mediators (and the political actors who dispatch them) of the advantages to be obtained by placing sexual violence firmly on negotiating agendas. Contrary to the facilitator-without-agenda image, mediators *do* have the ability, at the margins, to place topics on the negotiating table.

The case for addressing sexual violence in a peace process – and therefore in relevant portions of a peace agreement – rests on two types of argument: moral/legal and practical/instrumental. The moral and legal reasons for bringing sexual violence into peace negotiations are highlighted clearly in resolution 1820: sexual violence against civilians by armed forces is a serious international crime that cannot be ignored, nor can the responsibility be shifted away from commanders to soldiers.⁷ Mediators thus have an obligation to act as the voice of international human rights norms.

While mediators may have only limited leverage, they can and should inform all negotiating parties that the International Criminal Court (ICC) as well as the International Criminal Tribunals for the Former Yugoslavia (ICTY) and Rwanda (ICTR) and the Special Court for Sierra Leone have indicted and in some cases convicted both military and political leaders for sexual violence. The underlying message should be that, regardless of what is agreed between the negotiating parties, in the post-conflict phase they remain subject to international jurisdiction for war crimes and crimes against humanity. Sexual violence can qualify within one or both categories, depending on the intent of the perpetrators and the extent of the abuses. UN injunctions against brokering agreements that provide amnesties for serious violations of human rights and international humanitarian law have been invoked by mediators in cases such as the peace agreement that ended the war in Sierra Leone.⁸

While these legal norms embody and express a deep-seated human condemnation of sexual violence, there are further moral grounds on which a mediator may feel justified in proactively seeking to ensure that sexual violence is addressed in peace negotiations. These relate mainly to process, and go beyond the reprehensible nature of the acts themselves to the channels through which complaint and dissent are articulated. When the voices of directly affected constituencies are manifestly silenced – for reasons integral to the substantive issues concerned – a mediator is justified in trying to offset the representational constraints typical of peace processes. Due to the widespread social stigma that attaches to victims

of sexual violence, they tend to avoid engaging in public dialogue about the crimes to which they were subjected. Unlike other civilian casualties of war, survivors of sexual violence are not honoured. Instead, they are often blamed for their misfortune or placed out of sight for the shame that they are seen to have visited upon their communities. Systematic bias – inclining survivors towards silence even when they are not forcibly prohibited from speaking out – means that their urgent needs do not receive adequate attention. Under such circumstances, a mediator has not only a right but also a duty to raise on their behalf issues such as the need for specialized medical services, security arrangements and post-conflict judicial processes.

While there is a compelling legal and moral case for attending to issues of conflict-related sexual violence in peace processes, mediators face strong practical incentives to avoid distractions and instead to focus on issues that will maintain forward negotiating momentum. Therefore, mediators must be convinced that addressing sexual violence can in fact make a positive contribution to achieving a successful negotiated settlement. It is here that the close relationship between peacemaking and peacebuilding must be emphasized. This link is stressed in resolution 1820, which states that conflict-related sexual violence ‘can significantly exacerbate situations of armed conflict and may impede the restoration of international peace and security’.⁹

Mediators want more than just peace agreements; their interest is in fostering agreements that can serve as the basis for lasting peace. For this reason, mediators strive to design agreements that are ‘implementable’ and that provide effective safeguards against conflict recurrence.¹⁰ Agreements that fail to address sexual violence can detract from three essential elements of successful post-conflict peacebuilding: social stability, economic recovery and effective state authority.

First, conflict-related sexual violence destroys the fabric of families and communities. That is part of the intent of those who command it. Sowing discord within families, confusing bloodlines and inheritances, creating legions of orphans – these are the mechanisms that make targeted sexual violence such an effective tactic of war. If post-conflict institutions are not designed to grasp this legacy, then the ability of local communities to rebuild will be adversely affected, to the detriment of social stability and therefore sustainable peace more broadly.

Second, sustainable peace requires economic recovery. Agriculture is the key economic sector in many of the societies where sexual violence has been most intense. Women often play important, even dominant, roles in agricultural labour and marketing while having substantial decision-making power over investment. In contexts where a significant portion of the population has been raped – and, as a result, the fear of rape runs high, especially when the formal end of hostilities has not halted sexual violence – special protection arrangements are required to instil confidence among both victims and potential victims that their security is provided for. The absence of such measures can seriously impair the willingness and ability of women to engage in agricultural marketing activities, to enter into the workforce in general or to send their daughters to school. These all have far-reaching consequences for a post-conflict country’s development prospects.

Third, impunity for conflict-related sexual violence impedes the effective restoration of state authority. A peace agreement that exempts from prosecution those who command, condone or commit sexual violence – or, worse, rewards them with government posts or military commissions – will have its legitimacy undermined. Impunity does immeasurable harm to the delicate process of instilling a culture of respect for the rule of law. People lose faith in both their security services and the government at large. They become less willing to pay taxes and participate in civic life, weakening the prospects for the restoration of effective state authority, let alone accountable governance.

Thus, there are instrumental reasons for seeking a negotiated settlement that not only acknowledges but comprehensively addresses the legacies of wartime sexual violence – above and beyond the strong moral and legal grounds for prioritizing this issue. Sustainable peace requires reconciled communities grounded in reconstituted families that can contribute to social stability, secure public spaces that allow people to engage in economic recovery, and legitimate states in which the public can see justice impartially administered. Failing to address sexual violence in peace agreements can detract from all three goals. The result is a peace unlikely to be resilient in the face of shocks. Placing sexual violence on the negotiating agenda – and inviting into discussions the voices of survivors as well as experts and officials capable of addressing their short- and long-term needs – is a moral and legal imperative, for mediators and the international community. Doing so is also potentially a way to create a more conducive environment for implementing other elements of the peace deal. Expediency and justice are, unusually, in alignment.

Relevant Components of Peace Agreements for Addressing Sexual Violence

Provisions relating to the prevention of sexual violence or remedies for its effects can be included within at least five types (or elements) of peace agreement: (1) ‘early-stage agreements’ covering humanitarian-access and confidence-building measures; (2) ceasefires (including monitoring); (3) DDR and SSR; (4) protocols relating to post-conflict justice mechanisms; and (5) reparations for victims of serious human rights abuses.¹¹

1. *Early-Stage Agreements*

The early stages of a peace process hold significant opportunities to place sexual violence on the negotiating agenda and to address the needs of survivors. There are two main types of early-stage agreement.

The first consists of humanitarian-access agreements designed to allow relief agencies to serve civilian populations caught up in conflict zones. These are typically negotiated directly between actors such as the UN’s Office for the Coordination of Humanitarian Affairs (OCHA) and one or more parties to a conflict. Such agreements, which do not generally involve parties to a conflict making commitments to each other, sometimes include explicit ‘protection of civilian’ provisions, which commit the parties to respect International Humanitarian Law (IHL).

The second category consists of ‘confidence-building measures’. These are mutual undertakings between parties to a conflict to fulfil relatively modest commitments. The purpose is to engender a sense of trust among the negotiating parties and to demonstrate that each side has the constituency control necessary to make good on its promises. The International Committee of the Red Cross (ICRC) frequently verifies parties’ respect for IHL in conflict situations. When these agreements are respected they can help to propel negotiating parties towards a definitive settlement.

Early-stage agreements furnish at least three ways of addressing conflict-related sexual violence. First, they can enable field agencies to provide specialized medical and psychosocial services to victims, their families and their communities. Second, the presence of humanitarian agencies or human rights observers in a conflict zone can deter armed groups from committing sexual violence against civilians. Fear of negative international publicity, even through informal statements by individual relief workers rather than official reports issued by their agencies, can help to curb the worst excesses. Third, humanitarian-access agreements can, indirectly, enable relief agencies to monitor patterns of sexual violence – generating information that can be of use to the mediation process.

Early-stage agreements thus represent important opportunities to signal zero tolerance for sexual violence and to generate a commitment to preventing it. This can then be built upon in later phases of the peace process, including in the crucially important pre-negotiation ‘talks about talks’ through which the negotiating agenda often takes shape, the list of bona fide participants is agreed and the format and timeline for discussions are drawn up. All of these parameters affect the ability of advocacy organizations to keep conflict-related sexual violence in the spotlight as the peace process moves forward.

2. *Ceasefires and Ceasefire Monitoring*

Ceasefires can take various forms. They can be incorporated within comprehensive peace accords (CPAs) or crafted as stand-alone agreements of a temporary nature or of limited geographic scope. Ceasefires – whether part of a CPA or self-standing – can be highly complex documents (spelling out arrangements for DDR, for instance) or can be relatively non-specific.

Three main issues arise in assessing the function that a ceasefire can play in ending, reducing the incidence of or responding to sexual violence. The first is whether it is only in conflicts where sexual violence has been widespread that ceasefires should explicitly mention sexual violence. A case could be made that sexual violence only warrants an explicit reference in the terms of the ceasefire when it has been used as a tactic of war (i.e., where there is evidence of targeted or systematic use of sexual violence). On the other hand, given that Security-Council-authorized peace operations are increasingly tasked with a ‘protection of civilians’ mandate, any ceasefire that does not prohibit acts of sexual violence by armed actors would seem to run counter to the spirit of this trend.

A second question regarding ceasefires is where, and in what terms, sexual violence should be mentioned within the ceasefire. In the few existing cases where sexual violence has been referred to in a ceasefire, it has generally been

included in a list of abuses of the civilian population which parties are prohibited from committing. Concern has been expressed, however, that unless sexual violence is listed alongside other military acts, such as sabotage, artillery fire or systematic looting, it will not be taken sufficiently seriously. According to this logic, sexual violence by armed actors can only be regarded as a serious ceasefire violation – worthy of attention from ceasefire monitors and joint military commissions – if it is upgraded through explicit inclusion in the list of proscribed weaponry and overtly military tactics. However, it is not clear how or why reclassifying sexual violence in this way would trigger more robust action by ceasefire monitors or peacekeeping forces. The 2002 Nuba Mountains ceasefire in South Sudan, for instance, did not include sexual violence in the list of proscribed military acts. Instead it was included in a list of actions that would constitute abuse of the civilian population. This proved sufficient to ensure that sexual violence, like other attacks on civilians, did not erupt in the limited area covered by the unusually well-trained and well-resourced international observer team that monitored the Nuba Mountains ceasefire. At least one senior official closely involved in that process was of the view that reclassifying sexual violence within the ceasefire agreement would not have made a material difference to the mission's success.

The emphasis on 'upgrading' sexual violence within ceasefires may be misplaced for another reason, to do with the nature of ceasefire violations. The seriousness with which a particular violation is viewed – indeed the willingness to classify an incident as a violation at all – depends on the perceptions of the parties themselves, who dominate the joint military commissions that oversee ceasefire implementation. Regardless of the language of an agreement, if these actors decide not to view incidents of sexual violence committed against civilians by armed actors as sufficient reason to back away from their mutual, and voluntary, commitments to the terms of a ceasefire, no amount of bureaucratic reclassification will make them do so. Far more important are the composition, mandate, security and reporting procedures of the ceasefire-monitoring apparatus.

Indeed, to a considerable extent, the challenge with respect to sexual violence lies in the protocols that govern ceasefire monitoring. These, however, can be shaped by the language used in the ceasefire agreement. One crucial obstacle to effective monitoring for conflict-related sexual violence is the relative silence of its victims, whose reluctance to speak out reflects the social stigma associated with this crime. The task of monitoring for sexual violence thus requires the support of specialists in processing victim complaints, collecting and handling perishable evidence and systematically cross-checking information. The inclusion of female uniformed and civilian personnel on ceasefire-monitoring teams can contribute to the willingness of victims to report incidents.¹²

In short, ceasefire agreements should specify that conflict-related sexual violence is a prohibited act, and should do so in as prominent a place as possible. Just as important, monitoring arrangements must specifically mention the need to accommodate – with adequate staff, skills and equipment – the unique nature of sexual violence as a form of violation, and sometimes as a tactic of war.

3. *Disarmament, Demobilization and Reintegration, and Security Sector Reform*

Collectively, DDR and SSR have an enormous impact on the post-conflict security environment. This is particularly true with respect to the prevalence of sexual violence.

The disarmament, demobilization and reintegration of ex-combatants into civilian life or into reformed security services often takes place in the immediate aftermath of a conflict, well before other post-conflict recovery programmes begin operating. As such, DDR is a tool for short-term stabilization. To buy their adherence to a fragile peace, potential spoilers are disarmed and demobilized, often with a cash incentive. There are three issues related to DDR that, if addressed in the text of a peace accord, can help to counter the legacies of conflict-related sexual violence: (1) addressing the special needs of women and girls associated with fighting forces, including those who are victims of sexual violence; (2) giving special attention to the needs of the communities into which demobilized combatants are being 'reintegrated'; and (3) screening out perpetrators of sexual violence when determining eligibility for absorption into merged ('national') armed forces.

With regard to the first issue, women and girls associated with armed groups and often forces experience high levels of sexual violence (particularly those who were forcibly recruited as concubines or 'bush wives') and thus have specific vulnerabilities relating to their physical and psychological well-being. The widespread practice of obtaining lists of such women and girls from commanders can prevent the most needy women from entering DDR programmes. Commanders are often reluctant to forward the names of women and girls held against their will; doing so can be tantamount to providing documentary and testimonial evidence of their own misdeeds. DDR programmes also tend to prioritize the demobilization of male combatants, who are seen as a far greater threat to the peace than are women associated with these fighters. The stigmatization of women and girls associated with fighting forces, who are often presumed to have been raped, complicates their demobilization, as rejection by the receiving community has to be anticipated and addressed.

The second issue concerns the potential for elevated rates of sexual violence in communities to which demobilized combatants are returned – an issue that is typically not addressed in the reintegration components of DDR programmes. DDR programmes stimulate and facilitate the movement of large groups of ex-combatants, including perpetrators of conflict-related sexual violence, from military zones and barracks into mainstream civilian life. Defining and monitoring for gender-sensitive security indicators within receiving communities has not been commonplace, and little systematic data have been collected that could illuminate the relationship between women's physical security and the return of ex-combatants.

The third issue is closely related to the phenomenon of impunity (discussed below): to what extent can DDR programmes be used to screen out perpetrators of conflict-related sexual violence from absorption into the armed forces? To date, there is very little positive, replicable experience in vetting either

government or non-state military personnel. Partly this has to do with the standards of evidence that can reasonably be expected to pertain in such large-scale programmes. There has been a tendency to avoid using DDR programmes as a means of determining the suitability of new entrants to a state's armed forces. Fundamental restructuring of the security forces may be a better way of obtaining the same result.

SSR is an essential element of long-term prevention of sexual violence. The reform process represents a unique opportunity to reshape concepts of human and national security in ways that prohibit sexual violence and enable women both to participate in security institutions and to hold them accountable. The way in which comprehensive peace agreements address security sector reorganization varies greatly. Few peace accords cover SSR in much detail. In some instances, where it is included, a commitment to operational human rights training for military, paramilitary and police personnel in post-conflict settings is mentioned; this, however, almost never extends to addressing issues of sexual violence.¹³

Three ways in which methods for preventing sexual violence could be specified in the SSR provisions of a peace agreement include: (1) designing mandates for security and military reform commissions that task them with developing law-enforcement and military capabilities to protect civilians in sexual violence-intensive contexts; (2) specifying that training and staffing of the armed forces should equip security personnel to prevent sexual violence, including through the recruitment of women police and building Vulnerable Persons' Units in police stations; and (3) including women's groups that work on behalf of survivors of sexual violence in security sector oversight and monitoring bodies (such as a Civilian Advisory Council on Security).

4. *Post-conflict Justice Arrangements*

Justice components of peace agreements ideally seek to establish accountability for war-related crimes, redress for victims, and mechanisms to prevent future violations. These can include amnesty provisions, transitional justice institutions, criminal prosecutions (including international tribunals), truth commissions and traditional dispute-resolution mechanisms.

The record to date is not encouraging. Despite the progress made in international jurisprudence on sexual violence since international war crimes tribunals began indicting and prosecuting conflict-related sexual violence in the 1990s, the number of convictions remains extremely low: only three dozen individuals have been sent to gaol by international war crimes courts for these crimes.¹⁴ Transitional justice mechanisms have not yet effectively protected witnesses and victims, nor have domestic courts built strong records of prosecuting wartime sexual violence.¹⁵ These are among the reasons why taking action against sexual violence must begin with the peace deal.

Mediators face considerable challenges when attempting to ensure that issues of sexual violence receive adequate attention in the justice components of a peace agreement. Three of these are particularly salient.

First, mediators are under pressure to grant amnesties for perpetrators in order to hasten the resolution of a conflict. All forms of conflict-related sexual violence constitute international mass-atrocity crimes – war crimes, crimes against humanity or constitutive acts of genocide. Mediators are thus, *de jure*, prohibited from providing official backing for agreements that include amnesty provisions for such crimes – a principle that has been categorically reasserted in resolution 1820.¹⁶ This prohibition on amnesty includes not only ‘blanket’ amnesties, but also ‘conditional’ amnesties – those granted in exchange for a perpetrator’s willingness to disclose information about his/her role in such crimes or to apologize to victims or their families.

Second, the justice components of a peace agreement must be designed to address constraints within domestic legal systems. There is rarely sufficient domestic capacity to handle the volume of claims related to conflict-related and post-conflict sexual violence. As a result, sexual violence is rarely prioritized by prosecutors and judicial actors. Yet, a fast track for prosecuting perpetrators of sexual violence would not only increase the chances of effectively punishing the guilty, but also send an unmistakable message about the seriousness with which these crimes are regarded and the vigour with which efforts to restore war-damaged social norms will be undertaken.

A related constraint is gender bias in national judicial institutions, which often lack sufficient legal basis for prosecuting sexual violence, or even a commitment to apply such law as exists. Peace agreements should, therefore, include specific commitments to legislative reform to ensure that sexual violence is criminalized and to protect the property rights of survivors whose families ostracize or disinherit them.

Third, when peace agreements provide for a truth and reconciliation commission, care must be taken to specify that such a body is not a substitute for formal legal accountability, and that it will work within rules stipulated by the wider criminal justice system. For truth-seeking mechanisms to address sexual violence effectively they must earmark sufficient resources for survivors to participate without sacrificing their safety or dignity. Mediators should therefore seek to include textual provisions that specify conflict-related sexual violence as a cognizable offence.

5. *Reparations*

Because sexual violence perpetrated by armed groups during conflict is recognized as a violation of human rights and international humanitarian law, its relevance to mechanisms for reparations and legal redress is readily apparent, even if the best means for addressing sexual violence in reparations programmes is open to debate. While, logically and practically, a reparations regime might be delayed until the post-conflict period, there is enough evidence suggesting that survivors of sexual violence are marginalized in the post-conflict period and thus unable effectively to win acceptance for special provisions to address their needs. The need to balance these two considerations means that something short of a detailed action plan, but more than a spare outline, is called for. Three issues – each

posing a distinct sexual-violence-related question – should be considered when devising a post-conflict reparations process.

The first concerns form: whether reparations claims are to be processed through a judicial (or quasi-judicial) venue, or through mechanisms established under the auspices of a large-scale administrative programme, or some combination of the two. There is considerable debate concerning which of these mechanisms best serves the objective of providing meaningful reparations for sexual violence survivors – and doing so in ways that deter future perpetrators while recalibrating social norms. Administrative programmes have the advantage of speed, coverage, consistency and the ability to spare survivors the requirements typically imposed by judicial venues to prove their claims. On the other hand, administrative programmes may deprive survivors of the opportunity to see their perpetrators brought to justice. This tension between expediency and justice can be attenuated if administrative reparations programmes are designed not to preclude individual civil claims. Such programmes must not allow state investigative and prosecuting authorities to escape the obligation to pursue enforcement action.

Second, what standards of evidence will be required to prove that an individual has suffered a human rights violation? It is often difficult, if not impossible, to document abuses to the standard expected when civil authority is at normal levels of capacity. But in post-conflict contexts investigative agencies are often not functional; legal and medical expertise is spread thin; victims are understandably reluctant to face cross-examination, whether in a court setting or in the context of an administrative claims procedure. In some cases, survivors have not informed family members of the traumas they have suffered, fearing blame or lasting stigma.

The third issue concerns the modalities of reparations. Should reparations be of a material type (cash payments, pensions, land grants) or be symbolic in nature (public apologies, memorials, days of remembrance)? And should reparations be granted to individuals or to groups (defined by victim category, locality or some other basis)? Moreover, a range of questions arises concerning the prevailing degree of consensus for promoting social change in a post-conflict society. If reparations are awarded in the form of ‘restitution’, it is necessary to consider carefully the condition to which victims should be ‘restored’. If, for instance, the status quo ante was one in which women’s property rights were inferior to those enjoyed by men, *de jure* or *de facto*, then ‘restoring’ such rights is unlikely to provide any effective remedy.

There are limits to how much detail can or should be included in the sections of a peace agreement that deal with reparations. Often an agreement will simply charge a truth commission with developing the necessary institutional framework, as was the case in Sierra Leone. But even when a minimalist approach is adopted, a skilled mediator may be able to specify within the text of a peace agreement certain minimum standards concerning the design of reparations modalities. With respect to sexual violence survivors, six minimum standards could be specified. First, women should be adequately represented on the body tasked by the terms of a peace agreement with designing and implementing a reparations

regime. Second, reparations regimes should include sexual violence victims as a distinct beneficiary category. Third, administrative reparations programmes, where they exist, should not preclude victim participation in criminal prosecutions or civil litigation against perpetrators, collusive state officials, or non-state actors. Fourth, evidentiary thresholds should be significantly relaxed for people claiming reparations on the basis of having been subjected to sexual violence. Fifth, regardless of individual compensation, sexual violence survivors should collectively receive public apologies from state institutions that either directly inflicted or failed to prevent conflict-related sexual violence. Sixth, to reduce the risk of stigmatization, and thereby lower the disincentive of survivors to initiate claims, procedures should remain confidential, such that survivors of sexual violence need not publicly reveal that they are obtaining or claiming benefits.

Conclusion

We conclude by summarizing the main points advanced in this article and discussing the relationship between resolution 1820 and other relevant Security Council resolutions.

Despite the increasing salience of sexual violence as a tactic of war – in terms of news reporting on conflict situations as well as the high-profile advocacy and operational work of multilateral organizations such as the UN – systematic attention to this issue in internationally mediated peace processes remains extremely rare. To rectify this shortcoming, mediators must be reminded of the moral and legal obligation to raise sexual violence in peace negotiations. Mediators must also be convinced that there are practical means of addressing sexual violence in peace deals, and that doing so may in fact be beneficial from the perspective of sustainable peace.

Practitioner deliberations at the June 2009 Colloquium on mediation and sexual violence generated support for the position that, all other things being equal, peace agreements that do not address crucial human rights concerns – including, but not limited to, conflict-related sexual violence – are at greater risk of collapse than those that do. Indeed, the provision of specialized security arrangements – and an end to impunity for those who command, condone or commit conflict-related sexual violence – is essential for establishing social stability, promoting economic recovery and restoring effective state authority, three essential elements of effective peace consolidation.

Actors that can bring pressure to bear on mediators and negotiating parties include local women's organizations, international civil society groups and UN member states committed to ending mass atrocities in places such as the Democratic Republic of Congo and Sudan. But more than pressure is needed. Mediators also need support – both financial and diplomatic backing. Contact Groups and Groups of Friends formed to support individual peace processes can play a crucial role in ensuring that difficult human rights issues are addressed. Consistency in member state support for attention to sexual violence issues is critical. All too often member states, including some of those

responsible for the passage of resolution 1820, place unreasonable pressure on mediators to conclude peace agreements quickly, with insufficient attention to issues such as conflict-related sexual violence. A more productive strategy would be for leading member states to announce collectively an intention not to fund the implementation of peace agreements that do not address the complex legacies of conflict-related sexual violence. Such an approach would place great leverage in the hands of a mediator *vis à vis* negotiating parties that refuse to discuss the issue. Member states could also provide mediation teams with experts on methods of detecting, preventing, responding to and prosecuting conflict-related sexual violence.

The symbolic impact of incorporating specific provisions related to sexual violence within peace agreements must not be underestimated. Where cultural norms assign blame to the victim rather than to the perpetrator, and where domestic legal frameworks need strengthening to support prosecution of these crimes, acknowledging the scale and seriousness of sexual violence in a peace accord can send a much-needed signal that this is a war crime to be treated on an equal basis with others. High-visibility recognition of such crimes as early as possible in the peace process sends the message that victims of sexual violence are not to be vilified, and that prosecutions can be expected. Moreover, recognition in a peace accord can accelerate necessary amendments to domestic law; a peace agreement is likely to be a more immediate, and therefore effective, prod to legislative reform than more distant instruments of international law would be. Norm-setting is particularly important with regard to frequently overlooked victim categories such as women and girls associated with armed forces.

In addition, specific textual references to sexual violence in peace agreements provide leverage to activists demanding justice, services and protection for survivors in the post-conflict dispensation. In conflicts where sexual violence was either not mentioned in a peace accord at all (Sierra Leone, Liberia, Bosnia and Herzegovina), or not linked specifically to justice and reparations measures (Guatemala), victims-rights advocates had to wage an uphill battle to ensure its inclusion in the terms of reference for truth and reconciliation, human rights and reparations commissions, as well as in SSR and DDR measures and longer-term planning for economic recovery. Explicit language in peace accords paves the way for swifter implementation of security, justice, and socio-economic responses.

What of the relationship between Security Council resolution 1820 and related measures passed by the Council? Resolution 1820 is regarded by some critics as detracting from the historic achievement of resolution 1325, the former casting women as victims of conflict, not agents of peace. However, the two resolutions are mutually supportive. Implementing resolution 1325's provisions regarding women's participation in conflict resolution is critical to implementing resolution 1820. As Pierre Schori, former special representative of the Secretary-General (SRSG) in Côte D'Ivoire, argues, 'SCR 1325 is about prevention and power; SCR 1820 is about protection and punishment. Both are important. But there will be no sustainable implementation of 1820 unless you are also implementing 1325'.¹⁷ At the same time, without resolution

1820's explicit acknowledgement that sexual violence can be a tactic of war, requiring both security and political responses, women who manage to participate in peace negotiations would find it far more difficult to ensure that responses to this issue are dealt with effectively by security actors and conflict mediators, not just by humanitarian actors.

In September 2009, the Security Council demonstrated an unprecedented level of determination to prevent conflict-related sexual violence by passing resolution 1888, with the intention of accelerating implementation of resolution 1820.¹⁸ Resolution 1888 provides for the appointment of a high-level SRSG to mobilize the UN system to prevent and respond to conflict-related sexual violence. It calls for the formation of a rapid-response judicial and 'rule of law' capability to support countries seeking to fast-track prosecutions, and mandates the production of an annual report containing information on parties to armed conflict 'credibly suspected of perpetrating patterns of rape and other forms of sexual violence'.¹⁹ Those found responsible may be subjected to targeted sanctions. Resolution 1888 also urges mediators to address sexual violence in key components of peace accords, including those addressed here.²⁰

Finally, more research is needed to understand the impact of peace agreements. Clearly, there is no guarantee that textual references to sexual violence in peace accords, no matter how strategically placed or worded, are either necessary or sufficient to improve post-conflict outcomes – for survivors, for local communities or indeed for a country's prospects for sustainable peace. The 2002 Sun City peace accord that ended the major portion of the fighting in the Democratic Republic of Congo, for instance, included specific provisions related to sexual violence; and yet widespread and systematic rape by both government and non-state armed groups has persisted. Moreover, subsequent peace agreements for the Democratic Republic of Congo, notably the 23 March 2009 accord between the government and Laurent Nkunda's *Congrès National pour la Défense du Peuple*, do not mention sexual violence, and in fact have allowed alleged mass rapists to assume senior positions in the Democratic Republic of Congo's armed forces. In the case of Bosnia and Herzegovina, the 1995 Dayton Agreement that ended the conflict made no reference to sexual violence. Yet, organized sexual violence ceased relatively quickly there; the ICTY began prosecuting cases of sexual violence; and reparations programmes started compensating survivors, however imperfectly.

These cases highlight the limits of our understanding of this phenomenon. Clearly, more empirical research is needed to understand better the conditions under which internationally mediated peace negotiations can positively affect outcomes. At a minimum, however, peace agreements – the blueprints for the post-conflict order – must be sensitive to the unique challenges posed by conflict-related sexual violence.

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NOTES

1. Former UN Under Secretary-General for Humanitarian Affairs, statement at the High-Level Colloquium on 'Conflict-Related Sexual Violence and Peace Negotiations: Implementing Resolution 1820', organized on behalf of UN Action Against Sexual Violence in Conflict (a network of United Nations entities), in partnership with the Centre for Humanitarian Dialogue (a Geneva-based non-governmental organization), Harvard Club of New York City, 22–3 June 2009.
2. Ibid.
3. UNIFEM, 'Sexual Violence in Peace Agreements: A Quantitative Analysis', New York, June 2009 (forthcoming as a research report). The empirical data for this analysis were drawn largely from existing databases such as those maintained by the UN Department of Political Affairs (<http://peacemaker.unlb.org>) and the United States Institute of Peace (<http://www.usip.org/resources-tools>). The data do not include conflicts with very low levels of violence, such as small maritime or border disputes, or regional agreements unrelated to a specific conflict and therefore not the result of a mediated peace negotiation. The universe of ceasefires under review included stand-alone ceasefire agreements, cessation of hostilities agreements and similarly named accords, ceasefire provisions contained within CPAs, or implementation protocols designed to specify the modalities of a separately constituted ceasefire. Current and ongoing mediation processes are not included in the data reported here if insufficient information was available in the databases noted above. An agreement is recorded as having mentioned 'sexual violence' if it includes such language specifically or if it employs formulations such as 'rape', 'gender-based violence', 'sexual crimes' or near approximations of such terms.
4. Elisabeth Jean Wood, 'Variation in Sexual Violence during War', *Politics and Society*, Vol.34, No.3, 2006, pp.307–42.
5. Don Steinberg, 'Make Forced Marriage a Crime against Humanity', *Christian Science Monitor*, 9 June 2008.
6. UNIFEM (see n.3 above), Although Angola was not included in this sample, it should be noted that Dame Margaret Anstee was SRSG in Angola during 1991–02, and mediated the peace process while in that role. Another exception is Graça Machel, who was one of three mediators appointed by the African Union to help resolve Kenya's internal political crisis in 2008.
7. The 'international community's' legal obligations to address sexual violence are set out in the Security Council resolutions mentioned in the preamble to 1820 – notably 1325 (2000) on women, peace and security; 1612 (2005) on children and armed conflict; and 1674 (2006) on the protection of civilians. Other relevant legal instruments include the Convention on the Elimination of All forms of Discrimination against Women (1979), the Rome Statute (1998) of the International Criminal Court, and the charters of the ad hoc International Criminal Tribunals for Rwanda and Yugoslavia and the Special Court for Sierra Leone. Regional treaties also establish this legal obligation – for instance, the International Conference on the Great Lakes Region's Protocol on the Prevention and Suppression of Sexual Violence against Women and Children (2006). Resolution 1820, moreover, reaffirms the legal status of sexual violence as a war crime, a crime against humanity and a constitutive act of genocide, for which amnesty cannot be granted.
8. Priscilla Hayner, *Negotiating Peace in Sierra Leone: Confronting the Justice Challenge*, Geneva: Centre for Humanitarian Dialogue and the International Center for Transitional Justice, 2007.
9. UN doc., S/RES/1820 (2008), OP 1.
10. See Nicholas Haysom, 'Negotiating a Sustainable Political Settlement: Lessons from the South African Settlement', paper presented at 'Toward Inclusive and Participatory Constitution Making', Kathmandu, 3–5 August 2004.
11. This section draws on and modifies ideas developed by the five technical working groups constituted to develop sectoral background papers for the June 2009 Colloquium referenced above. The

- authors are indebted to the members of these working groups, particularly their convenors, who in most cases took the lead in drafting the background papers: Peter Barwick ('Early Stage' Agreements) Brian McQuinn (Ceasefires), Anne-Kristin Treiber (SSR and DDR) and Shibani Malhotra and Meredith Preston McGhie (Justice). The authors co-chaired the Reparations technical working group.
12. In non-conflict contexts both women and men victims of sexual violence prefer to report to female police. See Jan Walsh and Fiona Mason, 'Rape and Sexual Assault', *British Medical Journal*, Vol.334, 2007, pp.1154–8. The one case to date of a fully deployed all-female police peacekeeping unit, the 130-strong all-women Indian contingent in Liberia, has generated anecdotal evidence of increased rates of reporting of gender-based violence of all kinds in the areas they patrol. They have also had a profound role-modelling effect, boosting recruitment of young women to Liberia's national police. See Kristin Cordell, 'Liberia: Women Peacekeepers and Human Security', *OpenDemocracy*, 8 Oct. 2009 (at: www.opendemocracy.net/blog/liberia/kristen-cordell/2009/10/08/liberia-women-peacekeepers-and-human-security).
 13. For instance, it was not mentioned in the Timor-Leste agreement, while it received a robust treatment in the agreements for El Salvador, Guatemala, Bosnia and Herzegovina and Liberia. It was addressed only sketchily in the Sierra Leone agreement. See Eboe Hutchful, 'Security Sector Reform Provisions in Peace Agreements', University of Birmingham Global Facilitation Network for Security Sector Reform, 2009, p.10 (at: www.ssrnetwork.net/documents/Publications/SSRPIPA/SSR%20Main%20Report.pdf).
 14. The ICC has yet to reach its first decision; the first trial does not include charges of sexual violence. At the ICTFY, 18 convictions relate to sexual violence. The number is lower in other courts: eight convictions at the ICTR, and six convictions at the Special Court for Sierra Leone, though in some cases multiple defendants and multiple counts were involved.
 15. The record of special transitional justice mechanisms has been uneven in addressing sexual violence. Perhaps most disappointing was the outcome of Liberia's Truth and Reconciliation Commission, which after three years of hearings and a mandate that included a strong focus on gender-based crimes, reported in June 2009 that fewer than 1.5 per cent of the allegations it heard related to sexual violence. Given that sexual violence was experienced by a large number of women during the war, explanations for this include the absence of confidentiality provisions and protection for women testifying about sexual violence. See Anu Pillay, 'Transitional Justice, Gender and Women', unpublished manuscript, 2009 (forthcoming as a UNIFEM research report); Kristen Cibelli, Jule Kruger and Amelia Hoover, 'Descriptive Statistics from Statements to the Liberian Truth and Reconciliation Commission', Annex to the Final Report of the Truth and Reconciliation Commission of Liberia, Monrovia, 2009.
 16. UN doc., S/RES/1820 (2008), OP 4.
 17. June 2009 New York Colloquium on 'Conflict-Related Sexual Violence and Peace Negotiations: Implementing Resolution 1820'.
 18. Resolution 1820 has also influenced Security Council decisions in other areas such as the protection of children in conflict. Resolution 1882 includes sexual violence against children in conflict as one of the violations that must be treated in the annual Children and Armed Conflict report, in which perpetrators of these violations are directly named.
 19. UN doc., S/RES/1888 (2009), OP 27(c).
 20. The language of SCR 1888 was directly influenced by recommendations produced by the June 2009 New York High-Level Colloquium. See, for instance, the preambular paragraph: '*Emphasizing* the importance of addressing sexual violence issues from the outset of peace processes and mediation efforts, in order to protect populations at risk and promote full stability, in particular in the areas of pre-ceasefire humanitarian access and human rights agreements, ceasefires and ceasefire monitoring, Disarmament, Demobilization and Reintegration (DDR), Security Sector Reform (SSR) arrangements, justice and reparations, post-conflict recovery and development'. See also Operational Paragraph 17, which '*Urges* that issues of sexual violence be included in all United Nations-sponsored peace negotiation agendas, and *also urges* inclusion of sexual violence issues from the outset of peace processes in such situations, in particular in the areas of pre-ceasefires, humanitarian access and human rights agreements, ceasefires and ceasefire monitoring, DDR and SSR arrangements, vetting of armed and security forces, justice, reparations, and recovery/development'. UN Security Council resolution 1888 (2009), S/RES/1888/2009.