

## Advancing the Legal Enforcement of SCR 1325

### Structural and Political Obstacles Imposed by the United Nations

#### Introduction

The passage of United Nations Security Council Resolution 1325 (SCR 1325) in 2000 was a legal milestone for women's rights to equality and non-discrimination. For the first time the UN Security Council not only recognized the gender-biased impact of internal or country conflict, it also mandated that the UN itself and all member states erect and monitor enforceable protections from such gender-based violence. However, there is still an urgent need to address:

- The lack of any systematic progress towards parity for women as decision-makers in UN sponsored and other peace negotiations;
- The failure to recognize SCR 1325 as a binding international law, particularly, as applicable to transitional justice processes;
- The total exclusion of women stakeholders from such pariah states as Burma who are forced to operate only in exile and because of their difficult legal status are prevented from travel and access to critical INGO and UN networking;
- The discrimination against women survivors/victims of conflict from certain countries like Iraq where the politicized nature of the conflict has led to such actions as the de facto UN "blacklisting", stopping any UN support to the war crimes tribunal or to women victims of gender crimes under the Saddam regime;
- The absence of any penalties or sanctions for repeated violations of SCR 1325 or country funding conditions based on compliance in country action plans.

The Resolution's scope extends through the post-conflict transitional period and requires gender equality in all transitional justice processes including affirmative steps to ensure redress and justice for women. SCR 1325 recognizes the key role of women in the prevention and resolution of armed conflict and seeks to formalize their participation and partnership as a matter of law. Member countries and UN agencies are mandated to take documented steps towards gender parity in all aspects of peacekeeping negotiations and in post conflict institutions.

Unfortunately, six years after the adoption of SCR 1325, the Resolution has fallen victim to many of the same political and legal norms which have historically undermined the legal rights of women under international law, the same legal norms which SCR 1325 was created to address. SCR 1325 is treated as "soft law" if law at all and not taken as seriously as other Security Council resolutions of the same degree of binding legal import. This key obstacle in the development of SCR 1325 as a legal tool is further restrained by the fact it is anchored in the UN System, which

means that it does not accommodate stakeholders who are outside the member states and in practice discriminates against such women stakeholders as the war crimes victims in Iraq because their legal tribunal (passed by the Iraqi parliament) is not UN endorsed.

The 2006 *Report of the Secretary-General on women, peace and security* (27/9/2006) states that “since the adoption of Resolution 1325, only 55 of 211, or 26.07 per cent, of country-specific resolutions include language on women or gender.” The report identifies institutional gaps and challenges to full implementation of SCR 1325 throughout the entire U.N. system, such as accountability, coherence and coordination. Even so, the report is silent on the fact that no efforts have been made to argue SCR 1325 as binding law on tribunal processes and procedures for access to justice such as ensuring women victims of rape protection from honor killings if they come forward to testify.

### The Case of Iraq

The effort to seek justice for war crimes and crimes against humanity in Iraq under the Saddam regime has taken place in a highly politicized environment. This reality has meant that Iraqi women are double victimized by global politics related to Iraq, and discriminatory customs and laws at home.

Because the Iraq High Tribunal (IHT) was not established through the mandate of the Security Council, as was the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), and because the IHT had U.S. and not U.N. leadership, it has been largely boycotted by international human rights groups and the UN. The IHT statute was passed by the Iraqi parliament in 2005 as a “look alike” to the ICC, and charges the Judges to use international law specifically referencing the decisions of the other Tribunals such as the ICTY, ICTR, and the International Criminal Court. Yet the Iraq tribunal is treated as a pariah by the United Nations system and excluded from any programs (such as in UNDP, UNIFEM, UNFPA )focusing on women’s inequality, violence against women, rape victims of war, judicial training, or redress of torture victims.

Neither the Iraq Tribunal nor civil society groups trying to assist it receive any assistance, technical or financial from the United Nations, resulting in a lack of training on international legal standards, especially as they relate to women and gender. International expert Judges and prosecutors and gender experts from UN sponsored Tribunals have been stopped by the UN from training Iraqi judges. One international expert was recently able to train the Iraqi judges on gender law rights only after she removed her UN work from her biography.

The ICTY two-year budget for 2004-2005 was more than \$270 million, almost exclusively funded by the United Nations. The ICTR two-year budget for 2004-2005 was more than \$225 million, exclusively funded by the United Nations. In both cases, some of this funding was allocated specifically to the inclusion of women in the post-conflict justice and reconciliation processes.

As a result of these factors -all unrelated to the needs of the victims-- the gender component of the IHT has not been developed, jeopardizing Iraqi women’s ability to access justice for sexual violence and other gender-based crimes during the Saddam regime and in the future. Navanethem Pillay, the first female judge at the International Criminal Tribunal for Rwanda (ICTR), who went on to become the first woman President of that Court, has argued that: “Who interprets the law is at least as important as who makes the law, if not more so... I cannot stress

how critical I consider it to be that women are represented and a gender perspective integrated at all levels of the investigation, prosecution, defense, witness protection and judiciary.” Similarly, the ICTY incorporated a gender perspective through appointment of female judges, a gender advisor in the Office of the Prosecutor, a sexual investigation team composed entirely of women with extensive experience on gender crimes, as well as gender training and mainstreaming for the entire Tribunal. Chief Prosecutor for the ICTY, Richard Goldstone, has stated “that if a woman had not been on the Tribunal in its early years, there may not have been *any* indictments for gender-based crimes.” The examples of the ICTY and ICTR demonstrate the critical importance women play in achieving gender justice. Unfortunately, the IHT has 1 female judge out of 60 judges, 1 female prosecutor, and no gender advisor or gender component. The only gender dimension to the IHT was the recently completed gender crimes training for one third of the tribunal judges which was both requested by the judges and eagerly received by them and resulted in a commitment to gender crimes accountability.

Furthermore, SCR 1325 is critically limited by its reliance on member state enforcement which means virtual exclusion of women from states like Burma who are the worst violators of international law, pariah states that do not comply with the UN in general and therefore are excluded from UN enforcement mechanisms. In these cases, the main women’s and democracy movements operate from exile and therefore are outside the reach of 1325 compliance networks. Complications and marginalization arise because the United Nations system, by design, is highly reliant on the coordination and implementation of all of its work by state actors. SCR 1325 is international law because the UN Charter requires all member states to follow SCR resolutions. Missions and programs are designed based on ‘in country’ actors and hinge on the cooperation of the state, a process that is not inclusive of exiled/refugee communities, nor accounts for situations in which the state is perpetrating the gender-based violence, as in the case of Burma.

### The Case of Burma

Burma/Myanmar has the longest running armed conflict in the world (between consecutive military regimes and the Karen National Union, the governing body of the Karen ethnic nationality, 1948-present), yet there has not been one attempt by the U.N. Security Council or any U.N. office to implement SCR 1325. There have been no less than five separate extensive reports documenting the extensive systematic use of rape and forced slavery as a weapon of war against ethnic minority women by the SPDC (Myanmar) military regime. Sexual violence and war crimes against women in Burma persist under a system of complete impunity. The reports even list the names and or the badge numbers of the military rapists.

UNIFEM has no programs or activities inside Burma or amongst its refugee populations, UNFPA is totally censored and regime compliant, and UNDP does not address 1325. . As a result of the stranglehold of power that the military regime maintains over all aspects of political, social, and economic life in the country, the pervasiveness of fear in society, and the immense threat to their safety and security, almost all women peacebuilding organizations are based in neighboring countries, mainly in Thailand. Although these local women’s organizations operate on very limited resources, they continue to document the increasing human rights abuses against women by the military, provide needed counseling and healthcare services to survivors of rape, torture and forced slave labor, supply refugee and internally displaced populations (IDPs) with much needed supplies for survival, run schools for refugees and IDPs, conduct women’s rights, political empowerment and peacebuilding trainings, and serve as the voice of women from Burma in the movement for freedom and democracy fighting for gender equality in the constitution drafting

process. As many United Nations programs are based on 'in country' missions, these women's organizations have been excluded from the peacebuilding process. None of these local women's organizations, the only implementers of SCR 1325 for the conflict in Burma, receive any type of assistance or funding from the United Nations, nor do they have access to the United Nation Security Council, even though Burma is now on the Security Council Agenda.

In addition, NGO's that work to realize the provisions of SCR 1325 are denied the right to apply for full access (consultative status) to the UN system until they have been in existence for two years. Given that many organizations working for transitional justice quickly materialize in periods of conflict and rapidly changing political conditions, the two-year requirement restricts UN access for NGO's which most need it.

## Recommendations

To address some of the structural /political obstacles to 1325, the Global Justice Center strongly urges U.N. member states to amend their country action plans and think "outside the box" including the following:

- Strengthen enforcement of SCR 1325
- Design and implement national action plans, in consultation with women peacebuilding organizations, that include implementation of SCR 1325 in their international assistance and foreign policy work, specifically identifying and addressing the most marginalized women
- Identify and reform gaps in implementation of SCR 1325 in the work of the United Nations, particularly those bodies, agencies and funds concerned with peace and security, to address the marginalization of women in peace and security initiatives
- Grant temporary consultative status to women civil society peace building organizations to the United Nations
- Condition all UK funding for U.N. aid and foreign assistance on compliance with and implementation of SCR 1325
- Provide access to funding for women survivors of gender-based violence in armed conflict through a victims trust fund