

Commissioner Kristalina Georgieva
Rue de la Loi 200/Wetstraat 200
1049 Brussels
Belgium

October 10, 2014

Re: The European Union's policy on abortion & the Geneva Conventions

Dear Commissioner Georgieva,

Thank you for your September 8, 2014 letter explaining the European Union's ("EU") position on abortion and the Geneva Conventions. As explained in our earlier correspondence, the Global Justice Center ("GJC") takes issue with the EU's position that national abortion laws, not the Geneva Conventions, govern the medical treatment options for impregnated victims of rape in armed conflict. This policy directly conflicts with the explicit policies of three EU member states: the UK, France and the Netherlands.

In countries where restrictive abortion laws do not contain exceptions for rape or to save a woman's life, the EU's policy legitimizes forced pregnancy and childbearing as an appropriate outcome for female rape victims in countries in armed conflict. The EU, as the world's second largest provider of humanitarian aid, is critical to ensuring victims of sexual violence in armed conflict receive comprehensive medical treatment and other forms of assistance.

Recognizing that the Commission is in the process of reconstituting and restructuring, we believe it is important that these critical issues, involving human rights and fundamental EU law, are revisited by the new leadership. In particular, I would like to address two misinterpretations reflected in your last letter: (1) the UK's policy on abortion and the Geneva Conventions, and (2) Security Council Resolution 2122. We request that you or your successor correct these misinterpretations.

First, your assertion that the EU and UK are in agreement that national laws are a contextual factor to be taken into account is a clear misinterpretation of the UK's policy, which is set forth in their practice paper *Safe and unsafe abortion: UK's policy position on safe and unsafe abortion in developing countries*. In fact, the express purpose of the UK policy is to set forth, in compliance with UK law and international humanitarian law ("IHL"), the situations in which IHL can be used to supersede national abortion laws in order to provide safe abortion services to women raped in war. Therefore it is illogical that national laws are a contextual factor to be taken into account in such circumstances and the EU's policy is not in fact "in agreement with the UK's interpretation".

Second, noting Security Council Resolution 2122, which was co-sponsored by 24 EU Member States, did not use the term "abortion" its language makes clear that Member

States and the UN must ensure that all options are given women impregnated by war rape¹. This provision is commonly understood to refer to access to abortion services², including because it directly responds to United Nations Secretary General Ban Ki-moon's September 2013 recommendation to the Council that girls and women raped in armed conflict be ensured access to "services for safe termination of pregnancies resulting from rape, without discrimination and in accordance with international human rights and humanitarian law". The Resolution was also explicitly cited as an antecedent for the UK's policy position on abortion and the Geneva Conventions. So although, as you mention, the Resolution does not explicitly make a reference to a "right to abortion", the context makes clear that this mandate does in fact include access to abortion.

Furthermore, no medical procedure must be declared a "right" to have it be a required treatment under IHL mandates. Medical treatments evolve and develop. IHL nowhere recognizes the right of a war victim to plastic surgery, a prosthesis or penile reconstruction surgery but all are required under IHL when medically necessary for the patient. Accordingly, we ask that the distorted interpretation of 2122, as set forth in your September 8, 2014 letter, should be corrected.

Thank you for your consideration of this matter.

Sincerely,

Janet Benshoof
President
Global Justice Center

¹ See UN Women, Press Release: UN Security Council adopts new resolution, urges women's full inclusion in peace talks and transitional justice, Oct. 18, 2013, available at <http://www.unwomen.org/en/news/stories/2013/10/press-release-on-adoption-of-wps-resolution>.

² ASIL Article, <http://www.asil.org/insights/volume/18/issue/5/substantive-new-normative-provisions-women-and-armed-conflict>