

London, August 28th, 2019

Justice:

CRISTINA PARDO SCHLESINGER

Corte Constitucional

Bogotá, Colombia

REF.: Expediente No. **T-7.396.064**

Acción de tutela contra la Unidad para la Atención y Reparación Integral a las Víctimas (UARIV) y contra Capital Salud EPS.

1. I respectfully request that the Constitutional Court allow me, Christine Chinkin, FBA, CMG, in my capacity as Emerita Professor of International Law, Professorial Research Fellow and Founding Director of the Centre of Women Peace and Security at the London School of Economics and Political Science, to submit evidence in the present case in accordance with Article 13 of Decree 2591 of 1991, which establishes that “*whoever has a legitimate interest in the result of the case shall be permitted to intervene as amicus or amici curiae.*”
2. I request to intervene in the present case given my long experience in teaching and researching on issues relating to women's human rights and gender-based and sexual violence against women in addition to my roles as a barrister, a member of Matrix Chambers and a William C Cook Global Law Professor at the University of Michigan Law School. I have held visiting appointments in Law Schools in Europe, Australia, the United States, Singapore and the People’s Republic of China. I was a member of the Human Rights Advisory Panel in Kosovo established by UNMIK from 2010 – 2016 and was Scientific Advisor to the Council of Europe’s Committee for the drafting of the Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention). Currently I am researching issues of gender and post-conflict reconstruction within the framework of international law; the political and legal aspects of human security; and the application of the Convention on Elimination of All Forms of Discrimination against Women, 1979.

3. This *amicus curiae* brief is submitted to the Constitutional Court of Colombia with the purpose of discussing relevant international law regarding the tutela action T- 7.396.064 against the Unidad de Atención y Reparación a las Víctimas (UARIV) [Victims Attention and Reparation Unit] and Capital Salud EPS.
4. The case before the Court concerns a plaintiff (“EGG”), a woman who at age 14 was forcibly displaced from her land and illegally recruited into the armed group, Colombian Revolutionary Armed Forces (FARC)¹ during the non-international armed conflict in Colombia. The FARC informed her that she was not permitted to have children and forced her to take contraceptives for most of the five years she remained in the FARC. In 2007, when the armed group discovered that EGG was pregnant, she was forced by the FARC commanders of her unit to have an abortion, threatening that if she did not the FARC would retaliate against her. EGG underwent an unsafe abortion procedure. The procedure resulted in several mental and physical health complications that continue to persist more than 10 years later.
5. The physical and emotional consequences of the forced abortion are severe and have continued to adversely affect EGG’s life.² Regarding her physical health, she was diagnosed with bladder stones and chronic renal failure. Though she underwent surgery to have the bladder stones removed, she continues to experience health problems, including chronic pain, urinary infections and she has yet to start treatment for her chronic renal failure. In regard to her mental health, she has not been able to access psychosocial treatment for her post-traumatic stress, depression, sleeping problems, fear and difficulty relating to other people.
6. The case before the Court concerns EGG’s eligibility to be recognized in the Registry of Victims as a victim of forced displacement, forced recruitment, and sexual violence during the armed conflict. EGG seeks to be included in the Registry of Victims in order to have access to reparations designed for victims of sexual violence, including priority access to timely, comprehensive medical services in order to repair the consequences of the health procedures

¹ Referencia: solicitud ciudadana de selección del expediente T-7.396.064, en proceso de tutela contra la Unidad para la Atención y Reparación Integral a las Víctimas (UARIV) y Capital Salud E.P.S, Women’s Link Worldwide (Jun. 4, 2019).

² See: EGG’s medical file included in the case file.

she endured while in the FARC. Additionally, she is seeking access to administrative reparations, access to the productive project program, and others.

7. The following *amicus* brief will discuss applicable international law relating to non-international armed conflict, obligations relating to conflict-affected gender-based and sexual violence and the sexual and reproductive rights of female victims of conflict-affected sexual violence, including those forcibly required to use contraception and to undergo abortion by non-State armed groups to which they are attached.

I. International standards require protection of women and girls against gender-based and sexual violence in armed conflict

8. ‘Violations of the human rights of women in situations of armed conflict are violations of the fundamental principles of international human rights law and humanitarian law.’³ Accordingly States have obligations with respect to conflict-affected sexual violence under international humanitarian law (IHL), international criminal law and international human rights law. The UN Security Council reaffirms these obligations in its nine successive Resolutions on Women Peace and Security that commenced with Resolution 1325 in 2000.
9. The Geneva Conventions of 1949 common article 3 applicable in non-international armed conflict requires States to treat ‘[p]ersons taking no active part in the hostilities...humanely, without any adverse distinction founded on... sex[...].’⁴ The same provision also prohibits, ‘outrages upon personal dignity, in particular humiliating and degrading treatment.’⁵ Furthermore, Additional Protocol II, also applicable to non-international armed conflicts, requires in the preamble ‘basic protection to the human person’ and ‘emphasiz[es] the need to ensure a better protection for the victims of those armed conflicts...’⁶ Article 4 protects ‘persons who do not take a direct part or who have ceased to take part in hostilities’ and to this end prohibits ‘at any time and in any place whatsoever ... e) outrages upon personal dignity,

³ Fourth World Conference on Women, Beijing Declaration and Platform for Action, 1995, § 131.

⁴ Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 12 August 1949, 75 U.N.T.S. 287, Article 3 § 1. Colombia ratified the 1949 Geneva Conventions on November 8, 1961.

⁵ *Ibid.*, at § 1(c).

⁶ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977. Colombia ratified Additional Protocol II on August 14, 1995.

in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault.’⁷

10. International criminal law imposes individual criminal responsibility for crimes of sexual violence. Article 7 of the Rome Statute of the International Criminal Court (ICC)⁸ defines crimes against humanity to include ‘rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity.’⁹ Article 8 (2) (e) (vi) repeats the same offences as serious violations of the laws and customs of war (war crimes) applicable in non-international armed conflict.

11. In a recent decision, *The Prosecutor v. Bosco Ntaganda*, the Appeal Chamber of the ICC held that violence committed against a person on the same side as the perpetrator can constitute a violation of IHL. In that case the Appeal Chamber upheld the conviction against Ntaganda on the charge of rape and sexual slavery (as well as other charges) committed against a child soldier who was under his command in the course of the armed conflict between Union of Congolese Patriots and its military wing the Patriotic Force for the Liberation of Congo (UPC/FPLC) and an opposition party in the district of Ituri in the Democratic Republic of Congo (DRC) from August 2002 to December 2003. The Appeal Chamber affirmed a previous holding that ‘provided there is a nexus to the armed conflict, rape and sexual slavery against any person is prohibited, and that therefore members of the same armed force are not per se excluded as potential victims of the war crimes of rape and sexual slavery under Article 8 (2) (e) (vi).’¹⁰

12. In situations of armed conflict, international human rights law and international humanitarian law apply concurrently.¹¹ It is now accepted under international human rights law that States have the obligation to prevent, prosecute and punish violence against women and to exercise

⁷ Ibid.

⁸ Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998, ISBN No. 92-9227-227-6. Colombia ratified the Rome Statute on August 5, 2002. It was incorporated to the Colombian legislation by Law 742 of 2005, and in decision C-578 of 2003, by Justice Manuel José Cepeda Espinosa, the Constitutional Court ruled on its constitutionality.

⁹ Ibid., at Article 7(1)(g).

¹⁰ *The Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06 (July 19, 2019) § 965.

¹¹ UN Committee on the Elimination of All Forms of Discrimination against Women (CEDAW Committee), General Recommendation No. 30, UN Doc. CEDAW/C/GC/30. (2013), § 20.

due diligence to investigate, prevent, prosecute and punish violence against women committed by non-state actors and to make reparation for victims of violations.

13. Colombia's international obligations to guarantee women's and girls' right to be free from violence come, in part, from the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),¹² as interpreted in the Committee's General Recommendation No. 19 on violence against women.¹³ The CEDAW Committee defined gender-based violence against women as violence which is directed against a woman 'because she is a woman or that affects women disproportionately.'¹⁴ Violence against women and girls is a form of discrimination and a violation of their human rights.¹⁵ Gender-based violence affects women throughout their life cycle and includes both acts or omissions that result in physical, sexual, psychological or economic harm or suffering to women.¹⁶ First laid out in General Recommendation No. 19 in 1992 and since reiterated in General Recommendations No. 30 of 2013 and No. 35 of 2017, situations of contention and political instability, and most especially of armed conflict, exacerbate existing gender inequalities, which increase women's and girls'¹⁷ risk of various forms of gender-based violence by both State and non-State actors.¹⁸

14. The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará) also asserts that 'every woman has the right to be free from violence in both the public and private spheres.'¹⁹ Article 7 requires States to

¹² Convention on the Elimination of All Forms of Discrimination Against Women, September 3, 1981, 1249 U.N.T.S. 13. Colombia ratified CEDAW on January 19, 1982 without reservation. The CEDAW Convention was incorporated into Colombian law under Law 51 of 1981. The Optional Protocol to the CEDAW Convention was incorporated by Law 984 of 2005. The Constitutional Court, in decision C-322 of 2006, by Justice Marco Gerardo Monroy Cabra, ruled on the constitutionality of both Laws.

¹³ UN Committee on the Elimination of All Forms of Discrimination against Women (CEDAW Committee), General Recommendation No. 19, violence against women, 11th session, 1992. In its General Recommendation No. 35, the Committee considered that the prohibition of gender-based violence against women has evolved into a principle of customary international law. UN Committee on the Elimination of All Forms of Discrimination against Women (CEDAW Committee), General Recommendation No. 35, UN Doc. CEDAW/C/GC/35. (2017), § 2.

¹⁴ CEDAW Committee General Recommendation No. 35, *supra* note 13, at § 1.

¹⁵ CEDAW Committee General Recommendation No. 30 *supra* note 11, at § 34.

¹⁶ CEDAW Committee General Recommendation No. 35 *supra* note 13, at § 14.

¹⁷ The CEDAW Committee has affirmed that CEDAW applies to girls; UN Committee on the Elimination of All Forms of Discrimination against Women (CEDAW Committee), General Recommendation No. 28, on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, UN Doc. CEDAW/C/GC/28. (2010), § 21.

¹⁸ CEDAW Committee General Recommendation No. 19 *supra* note 13, at § 16; CEDAW Committee General Recommendation No. 30 *supra* note 11, at § 34; CEDAW Committee General Recommendation No. 35 *supra* note 13, at § 14.

¹⁹ Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, 9 June 1994 (Belém do Pará), Article 3. Colombia ratified the Convention of Belém do Pará on December 3, 1996, it was incorporated into Colombian law

condemn all forms of violence against women and to enact ‘policies to prevent, punish and eradicate such violence.’ The Article includes the negative obligation on States parties to ‘refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation’ as well as the positive obligations to apply due diligence to prevent, investigate and impose penalties for violence against women and to establish ‘the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies.’²⁰ Article 9 makes it clear that the Convention applies to girls as well as women for it requires States parties to ‘take special account of the vulnerability of women to violence by reason of ... minor age’.

15. These obligations have been expressly confirmed by the UN Security Council. Security Council Resolution 2467 on Women, Peace and Security (WPS), adopted in April of 2019 and reaffirming its eight previous WPS resolutions, recalls States’ obligations under the Geneva Conventions and Additional Protocols and CEDAW. The Resolution also recognizes States’ ‘primary responsibility to respect and ensure the human rights of all persons within their territory and subject to their jurisdiction as provided for by international law,’ recalls States’ responsibilities to prosecute those responsible for crimes against humanity and war crimes perpetrated against civilians, and reiterates that sexual and gender-related crimes are among the most serious crimes of international concern in the Rome Statute of the International Criminal Court.²¹

A. Female combatants are in an especially vulnerable situation with respect to gender-based and sexual violence

16. Women and girls are more likely to be victims of sexual violence in armed conflict due to pre-existing patterns of violence and discrimination.²² It has been established that regardless of the type of armed conflict, duration or actors involved, women and girls are systematically,

by Law 248 of 1996. The Constitutional Court, in decision C-408 of 1996, by Justice Alejandro Martínez Caballero ruled on the constitutionality of the Law.

²⁰ Ibid., at Articles 7(a) 7(b) and 7(g).

²¹ UN Security Council, Resolution 2467 (2019) (Apr. 23, 2019), UN Doc. S/RES/2467 (2019).

²² United Nations Secretary General, Guidance Note of the Secretary-General: Reparations for Conflict-Related Sexual Violence (June 2014); *See also* UN Security Council, Resolution 2106 (2013) (Jun. 24, 2013), UN Doc. S/RES/2106. (2013).

deliberately targeted for violence and abuse—often specifically related to crimes of a sexual nature including forced impregnation, forced termination of pregnancy and sterilization.²³

17. International law requires States to protect against gender-based and sexual violence against women and girls during times of conflict. Women and girls who are forcibly recruited into the conflict are particularly vulnerable to sexual violence. As determined by the Appeal Chamber in the *Ntaganda* case the obligation persists when those crimes committed in conflict are committed against a person on the same side as the perpetrator.

18. The CEDAW Committee has recognized the especially vulnerable situation of women in armed groups. General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations provides guidance regarding ‘acts of private individuals or entities’²⁴ and is applicable to all women in non-international armed conflicts (and other situations of conflict and disturbance).²⁵ It emphasizes that gender-based violence by non-State actors in armed groups is pervasive and is committed with high levels of impunity.²⁶ Because of existing forms of discrimination outside situations of conflict, women in vulnerable positions, such as internal displacement or situations of armed conflict, are at particular risk of gender-based violence as these situations exacerbate levels of discrimination already present.²⁷

19. The CEDAW Committee recognizes women’s roles and experiences, including as combatants are diverse, and ‘State parties must address all aspects of their obligations under the Convention to eliminate discrimination against women.’²⁸ Female combatants are particularly vulnerable to violence by both State and non-State armed groups.²⁹ Given the known nature of discrimination against women in conflict being compounded by intersecting forms of discrimination, the CEDAW Committee underscores that States must ‘address the rights and distinct needs of conflict-affected girls that arise from gender-based discrimination.’³⁰ Gender-

²³ CEDAW Committee General Recommendation No. 30 *supra* note 11, at § 34.

²⁴ CEDAW Committee General Recommendation No. 30 *supra* note 11, at § 3.

²⁵ CEDAW Committee General Recommendation No. 30 *supra* note 11, at § 4.

²⁶ CEDAW Committee General Recommendation No. 35 *supra* note 13, at § 6.

²⁷ CEDAW Committee General Recommendation No. 35 *supra* note 13, at § 12.

²⁸ CEDAW Committee General Recommendation No. 30 *supra* note 11, at § 6.

²⁹ CEDAW Committee General Recommendation No. 30 *supra* note 11, at § 36.

³⁰ CEDAW Committee General Recommendation No. 30 *supra* note 11, at § 7.

based violence can affect women in different ways and ‘appropriate legal and policy responses are needed’ to account for the multiple and intersectional forms of discrimination.³¹

20. Security Council Resolution 2106 (2013) on Women Peace and Security also recognizes that women who have been forcefully abducted into armed groups and armed forces, as well as children, are especially vulnerable to sexual violence in armed conflict and post-conflict situations.³²

21. In the case before it, the Court is presented with a situation of a Petitioner who has suffered several rights violations: she was abducted as a child by an armed group and thus was in the vulnerable situation recognized by the CEDAW Committee and the UN Security Council; while affiliated with the group, she was subjected to sexual violence – forced contraception and forced abortion, - which, as explained below, are forms of gender-based and sexual violence. These harms give rise to State obligations as explained above.

B. Gender-based violence includes protecting sexual and reproductive rights and prohibiting harmful practices such as forced abortion and forced contraception. Denial of these rights in peacetime can constitute gender-based violence that through the continuum of violence is exacerbated by conflict.

22. The previous section has set out the international standards relating to States’ obligations with respect to preventing and combating gender-based and sexual violence against women and girls in armed conflict and recognition within those standards that female combatants are in an especially vulnerable situation. This section shows that State obligations include protecting against forced abortion and contraception as gender-based and sexual violence, as well as abduction as a form of human trafficking.

23. As discussed above, the CEDAW Committee has defined gender-based violence. The UN General Assembly has also explained that ‘violence against women means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm

³¹ CEDAW Committee General Recommendation No. 35 *supra* note 13, at § 12.

³² UN Security Council, Resolution 2106 (2013) (Jun. 24, 2013), UN Doc. S/RES/2106. (2013) § 17.

or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.’³³ This language was reiterated in the Beijing Platform for Action.³⁴ There is no generally accepted definition of sexual violence in international law.³⁵ One definition is from the Elements of Crimes agreed by the Assembly of States Parties to the ICC, which defines sexual violence as ‘an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person’s or persons’ incapacity to give genuine consent.’³⁶ Sexual violence is a form of gender-based violence as is apparent from the CEDAW Committee, the Beijing Platform for Action and the Rome Statute of the ICC, Articles 7 and 8 all of which list examples of gender-based violence as encompassing crimes of ‘physical, sexual and psychological violence’.

24. Gender-based violence includes violations of women’s sexual and reproductive health rights. The right to sexual and reproductive health includes the right to ‘decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so’ and ‘the right to the highest standard of sexual and reproductive health.’³⁷ It further ensures the ‘right to make decisions concerning reproduction free from discrimination, coercion and violence.’³⁸ These standards prohibit coercive measures that violate rights to the ‘physical and mental integrity of individuals and their autonomy, such as the right to life; liberty and security of person; freedom from torture and other cruel, inhuman or degrading treatment; privacy and

³³ UNGA Resolution 46/104, Declaration on the Elimination of Violence against Women, 20 December 1993.

³⁴ Beijing Platform for Action *supra* note 3, at §113.

³⁵ Guidance Note Of The Secretary-General, Reparations for Conflict-Related Sexual Violence, June 2014, <https://www.ohchr.org/Documents/Press/GuidanceNoteReparationsJune-2014.pdf>; The Note uses the definition of sexual violence in the OHCHR Analytical and Conceptual Framing of Conflict-related Sexual Violence, June 2011, following that of the World Health Organization: ‘any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed against a person’s sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work.’ For a more general statement of principles applicable to victims, see also UNGA Resolution 40/34, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, November 29, 1985.

³⁶ Elements of Crimes, adopted at the 2010 Review Conference of the Rome Statute of the International Criminal Court, Kampala, 31 May -11 June 2010, Article 7(1)(g) – 6, element 1.

³⁷ UN Population Fund (“UNFPA”), Report of the International Conference on Population and Development (18 October 1994), A/COMF.171/13, Principle 8, available at www.un.org/popin/icpd/conference/offeng/poa.html.

³⁸ *Ibid.*

respect for family life; and non-discrimination and equality.³⁹ Sexual and reproductive health is indivisible from, and interdependent with, these rights.⁴⁰

25. The International Covenant on Economic, Social, and Cultural Rights⁴¹ also contains provisions regarding women's right to health stating, 'the States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.'⁴² The Committee on Economic, Social and Cultural Rights expanded upon the right to health in General Comments No. 14 and No. 22.⁴³ General Comment No. 22 declares that 'the right to health must be understood as a right to the enjoyment of a variety of facilities, goods, services' and that 'States must guarantee physical and mental health care for survivors of sexual and domestic violence in all situations'.⁴⁴

26. Article 12 of CEDAW requires States take 'appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services...' and to 'ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.'⁴⁵

27. Security Council Resolution 2467 calls for a survivor-centered approach to preventing and responding to sexual violence.⁴⁶ The Resolution recognizes that survivors of sexual violence need non-discriminatory access to services such as medical and psychosocial care 'to the fullest extent practicable.'⁴⁷

28. The international standards relating to women's reproductive and sexual health are reinforced by regional standards. Article 14 of the Protocol to the African Charter on Human and Peoples'

³⁹ Committee on Economic Social and Cultural Rights (CESCR Committee) General Comment No. 22 on the Right to sexual and reproductive health, E/C.12/GC/22, 2 May 2016, § 10.

⁴⁰ *Ibid.*, at § 7.3.

⁴¹ Colombia ratified the Covenant on October 29, 1969.

⁴² International Covenant on Economic, Social and Cultural Rights, December 16, 1966, 993 U.N.T.S. 3., Article 12.

⁴³ Committee on Economic Social and Cultural Rights, General Comment No. 14: The right to the highest attainable standard of health, E/C.12/2000/4, 11 August 2000.

⁴⁴ CESCR Committee Comment No. 22 *supra* note 39.

⁴⁵ UN Convention on the Elimination of All Forms of Discrimination Against Women, *supra* note 12 at Article 12.

⁴⁶ UN Security Council, Resolution 2467 (2019) (Apr. 23, 2019), UN Doc. S/RES/2467 (2019).

⁴⁷ *Ibid.*

Rights on the Rights of Women in Africa (hereinafter ‘the Maputo Protocol’) holds that women must have ‘the right to decide whether to have children, the number of children and the spacing of children and the ‘right to choose any method of contraception’.

29. It flows from these general principles relating to women’s sexual and reproductive health that forced abortion and forcibly requiring a woman to use contraception constitute violations of gender-based and sexual violence against women. Being forced to use contraceptives deprives women of the right to freely choose whether to have children. Abortion - whether forced or refused – is the prime example of harm that is directed at a woman because she is a woman and which occurs exclusively to women. This is affirmed by a number of instruments. The World Health Organization defines sexual violence, a form of gender-based violence, as encompassing forced abortions and the denial of the right to use contraception.⁴⁸ The Beijing Platform for Action spells out that ‘Acts of violence against women also include forced sterilization and forced abortion, coercive/forced use of contraceptives, female infanticide and prenatal sex selection.’⁴⁹ The CEDAW Committee asserts that ‘Forced pregnancies, abortions or sterilization of women in conflict-affected areas violate a myriad of women’s rights, including the right under article 16 (1) (e) to decide freely and responsibly on the number and spacing of their children.’⁵⁰

30. Furthermore gender-based violence against women may amount to torture or cruel, inhuman or degrading treatment in certain circumstances, including in cases of harmful practices and denial of sexual and reproductive rights.⁵¹ Under the Rome Statute torture is ‘the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused’.⁵² The CEDAW Committee states that violations of women’s sexual and reproductive health and rights, such as forced sterilizations and forced abortion are forms of gender-based violence that can amount to torture or cruel, inhuman or

⁴⁸ World Health Organization, World report on violence and health, Chap. 6 “Sexual Violence,” (2002) at 149, available at https://www.who.int/violence_injury_prevention/violence/global_campaign/en/chap6.pdf.

⁴⁹ Beijing Platform for Action *supra* note 3, at § 115.

⁵⁰ CEDAW Committee General Recommendation No. 30 *supra* note 11, at § 64; CEDAW Committee General Recommendation No. 35 *supra* note 13, at § 18.

⁵¹ CEDAW Committee General Recommendation No. 35 *supra* note 13, at § 16.

⁵² Rome Statute of the International Criminal Court, 1998, Article 7 (2) (e).

degrading treatment and which may also constitute an international crime.⁵³ The Committee also asserts that a ‘gender-sensitive approach’ is needed to ‘understand the level of pain and suffering experienced by women, and that the purpose and intent requirements for classifying such acts as torture are satisfied when acts or omissions are gender-specific or perpetrated against a person on the basis of sex.’

31. UN Security Council Resolution 2467 on Women Peace and Security also recognizes that women and girls ‘need to be free from torture and cruel, inhuman or degrading treatment, and that violations of the obligations on the treatment of victims can amount to serious violations of international law.’⁵⁴

C. States must protect against human trafficking including abduction and forced recruitment into armed groups.

32. States have an obligation to ‘take decisive and immediate action to prevent, criminalize, investigate, prosecute and ensure accountability’ for those who engage in trafficking in persons including in armed conflict.⁵⁵
33. Trafficking in persons is defined in the Palermo Protocol, which Colombia ratified in 2004, as the ‘recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.’⁵⁶

⁵³ CEDAW Committee General Recommendation No. 35 *supra* note 13, at § 18.

⁵⁴ UN Security Council, Resolution 2467 (2019) (Apr. 23, 2019), UN Doc. S/RES/2467 (2019).

⁵⁵ UN Security Council, Resolution 2331 (2016) (Dec. 20, 2016), UN Doc. S/RES/2331 (2016) §. 2(b).

⁵⁶ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Palermo, 15 November 2000 (Palermo Protocol), Article 3. Upon ratification Colombia made one reservation regarding Article 35 (3) of the Convention, declaring that it does not consider itself bound by paragraph 2 of that Article, which is not relevant to this discussion.

34. Forced recruitment by an armed group through abduction from the person's land constitutes human trafficking within the Palermo Protocol definition:⁵⁷ recruitment by force (or threat of force) through abduction for the exploitative purpose of participation into the activities of the armed group.
35. Furthermore, EEG was 14 at the time of the abduction. In the case of children the required elements of trafficking namely the action (recruitment), the means (threat or use of force in abduction) and purpose (exploitation), are intrinsic elements of this grave violation of international law.⁵⁸ The Palermo Protocol spells out that: '(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if this does not involve any of the means set forth in subparagraph (a) of this article.'⁵⁹ States have particular obligations to protect children from abduction.⁶⁰
36. The forcible use of contraception and forced abortion are thus further violations of international law in the context of the already illegal trafficking in persons.
37. In 2016 in its Resolution 2331 the Security Council recognized that 'trafficking in persons in armed conflict ... can also be associated with sexual violence in conflict and that ... persons displaced by armed conflict ... can be especially vulnerable to trafficking in persons in armed conflict'. In 2017, the Secretary-General of the United Nations explicitly included trafficking in the definition of conflict-related sexual violence in recognition of their close association.⁶¹ As discussed above, conflict-related sexual violence encompasses forced abortion, enforced sterilization, and any other form of sexual violence of comparable gravity directly or indirectly linked to a conflict. This can include trafficking when committed in situations of conflict for the purpose of sexual violence or exploitation.⁶² In practice the exploitation through

⁵⁷ Report of the Secretary General on trafficking in persons in armed conflict pursuant to Security Council resolution 2388, U.N. Doc. S/2018/1042 (2017) § 12.

⁵⁸ Ibid.

⁵⁹ Palermo Protocol, Article 3 (c).

⁶⁰ UN General Assembly, Convention on the Rights of the Child, 20 November 1989, 1577 U.N.T.S. , Article 38. Colombia ratified the Convention on the Rights of the Child on January 28, 1991; Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 25 May 2000. The Optional Protocol was ratified by Colombia on May 25, 2005.

⁶¹ UN Security Council, Report of the Special Rapporteur on trafficking in persons, especially women and children, U.N. Doc A/73/171 (Jul. 17, 2018), §. 18.

⁶² Ibid.

recruitment into an armed group and sexual exploitation within the group are closely linked and hard to disentangle: forcibly requiring the use of contraception and forced abortion are forms of sexual and gender-based violence in addition to the crime of trafficking.

38. Conflicted-related sexual violence has also been linked with land dispossession, forced evictions and raids leading to abductions for the purpose of trafficking and, in country-specific situations, trafficking has been linked with sexual violence.⁶³

II. Female Combatants Victims of Violations of IHL and Human Rights Law are Entitled to Access to Reparations under International Law

39. International human rights law⁶⁴ and IHL⁶⁵ require States to provide reparation to victims of violations including sexual violence. The CEDAW Committee has affirmed that ‘under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.’⁶⁶ States have a positive obligation to eliminate barriers to access to justice for women⁶⁷ and to adopt special measures to ensure access for those ‘belonging to groups which have been marginalized or made vulnerable.’⁶⁸ As stated earlier those abducted into armed groups are forced into an especially vulnerable situation.

40. Security Council Resolution 2467 recognises the need for a survivor-centered approach to preventing and responding to sexual violence.⁶⁹ The Resolution ‘recalls the applicable provisions of international law on the right to an effective remedy for violations of human

⁶³ Report of the Special Rapporteur on trafficking in persons, especially women and children *supra* note 61, at § 18.

⁶⁴ Universal Declaration of Human Rights (Article 8), International Covenant on Civil and Political Rights (Article 2), International Convention on the Elimination of All Forms of Racial Discrimination (Article 6), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 14), Convention on the Rights of the Child (Article 39).

⁶⁵ Hague Convention respecting the Laws and Customs of War on Land of 18 October 1907 (Convention IV), (Article 3); Protocol Additional to the Geneva Conventions of 12 August 1949 (Article 91), and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977, applicable during armed conflict.

⁶⁶ CEDAW Committee General Recommendation No. 19 *supra* note 13, at § 9.

⁶⁷ UN Committee on the Elimination of All Forms of Discrimination against Women (CEDAW Committee), General Recommendation No. 33 on women’s access to justice, CEDAW/C/GR/33, 3 August 2015.

⁶⁸ Committee Against Torture, General Comment No. 3, Implementation of article 14 by States parties, CAT/C/GC/3, 13 December 2010, § 23.

⁶⁹ UN Security Council, Resolution 2467 (2019) (Apr. 23, 2019), UN Doc. S/RES/2467 (2019), preamble. The ‘survivor-centered’ approach is developed throughout Resolution 2467.

rights, calls upon Member States to make such effective remedy and assistance available to victims of sexual violence in conflict, and post-conflict situations'.⁷⁰

41. Security Council Resolution 2106 (2013) highlights the importance of a 'comprehensive approach to transitional justice in armed conflict and post-conflict situations, encompassing the full range of judicial and non-judicial measures, as appropriate.' Resolution 2467 (2019) affirms that victims of sexual violence by non-state armed groups should have access to national relief and reparations programmes, as well as health care, psychosocial care, safe shelter, livelihood support and legal aid.'
42. These international provisions clearly indicate the right of those who have suffered conflict-affected gender-based and sexual violence to reparations. However, there are often obstacles facing women who seek access to justice. A significant obstacle is gender stereotyping.
43. Gender stereotyping occurs when such attribution is rooted in gender that 'refers to cultural expectations and assumptions about the behaviour, attitudes, personality traits, and physical and intellectual capacities of men and women, based solely on their identity as men or women.'⁷¹ A follow-up mechanism to Belém do Pará on Violence against Women, Girls and Adolescents and their Sexual and Reproductive Rights asserts in a 2014 Declaration that gender stereotypes are incompatible with international human rights law and identifies that their prevalence 'remains an obstacle to the exercise of the rights of women and girls, [that] hinders their access to the administration of justice, and contradicts the due diligence obligations of States'.⁷² The CEDAW Convention requires State parties to take 'all appropriate measures' to eliminate practices 'based on the idea of inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.'⁷³ This obligation is reiterated in the Convention of Belém do Pará, Article 8.

⁷⁰ Ibid at § 21.

⁷¹ Committee ESCR, General Comment No. 16, The equal right of men and women to the enjoyment of all economic, social and cultural rights (Article. 3 of the International Covenant on Economic, Social and Cultural Rights), UN Doc. E/C.12/2005/4, 11 August 2005, § 14.

⁷² Declaration on Violence Against Women, Girls and Adolescents and their Sexual and Reproductive Rights Follow-Up Mechanism to the Convention of Belém do Pará (MESECVI) Committee of Experts (CEVI), September 18th and 19th, 2014 Montevideo, Uruguay OEA/Ser.L/II.7.10 MESECVI/CEVI/DEC.4/14 (September 19, 2014), at 3.

⁷³ Convention on the Elimination of All Forms of Discrimination Against Women, *supra* note 12 at Article 5.

44. Women victims of sexual violence are subject to adverse gender stereotypes, often rooted in common assumptions of men's entitlement to control women.⁷⁴ Stereotypes associated with women who assert violence was committed against them also include assumptions that she did not suffer as badly as she claims, or that she would have left the violent situation, or that she is the one to blame for the violence.
45. Among prevalent gender stereotypes are that women are passive and peace loving. Women combatants are perceived to have broken accepted gender norms of behavior regardless of whether they were forcibly recruited and been subject to sexual violence and having been subjected to such violence are likely to be doubly stereotyped. This can deny their right to justice. The CEDAW Committee has asserted that 'States parties have an obligation to expose and remove the underlying social and cultural barriers, including gender stereotypes, that prevent women from exercising and claiming their rights and impede their access to effective remedies.'⁷⁵ The obligation of States not to discriminate through acts or omissions and to take active steps to counter discriminatory stereotypes that adversely impact upon women does not cease in times of armed conflict.⁷⁶ Accordingly the State should ensure that EGG is not discriminated against and is able to access justice and seek reparations.
46. Any form of sexual violence, including rape, sexual abuse, forced pregnancy, forced sterilization, forced abortion, and more, result in a range of physical and psychological consequences for women.⁷⁷ Women are entitled to an effective and timely remedy and 'adequate reparations.'⁷⁸ Reparations for victims of conflict-related sexual violence must be responsive to the harm suffered. The Office of the Prosecutor of the ICC has set out its policy on sexual and gender-based crimes, drawing on the Statute, the Rules and Regulations of the Court and other related policy documents. It 'supports a gender-inclusive approach to reparations, taking into account the gender-specific impact on, as well as the harm caused to, and suffering of, the victims affected by the crimes.'⁷⁹ The approach is intended to promote

⁷⁴ Cusack, Simone, "Eliminating judicial stereotyping: Equal access to justice for women in gender-based violence cases," (Jun. 9, 2014).

⁷⁵ CEDAW Committee General Recommendation No. 33 *supra* note 67, at § 7.

⁷⁶ CEDAW Committee General Recommendation No. 28 *supra* note 17, at § 10-11.

⁷⁷ CEDAW Committee General Recommendation No. 30 *supra* note 11, at § 37.

⁷⁸ CEDAW Committee General Recommendation No. 33 *supra* note 67, at § 19(g).

⁷⁹ International Criminal Court, Policy Paper on Sexual and Gender-Based Crimes (2014), § 10, 102.

transformative reparations that contribute to advancing gender equality⁸⁰ and combating structural inequalities.

47. Reparations include ‘compensation, satisfaction, rehabilitation and guarantees of non-repetition.’⁸¹ They must also be ‘adequate, effective, promptly attributed, holistic and proportional to the gravity of the harm suffered.’⁸²

48. The CEDAW Committee also affirms the need for comprehensive and diverse remedies, specifying the need for ‘the provision of legal, social and health services, including sexual, reproductive and mental health services for a complete recovery’ as well.⁸³ These remedies must prioritize recognizing women and girls as the subject of rights and promote their agency and autonomy.⁸⁴

49. States must ‘implement diverse measures to tackle gender-based violence against women committed by non-State actors.’⁸⁵ In order to satisfy the right to adequate remedies, laws and institutions must address the violence and ensure they ‘function effectively in practice and are supported by all State agents and bodies who diligently enforce the laws.’⁸⁶ Failure to identify women’s and girls’ specific needs regarding reparations serves as a barrier to access to justice and experiences of female ex-combatants continue to be rendered invisible.

III. Conclusion

50. As set out above, a review of relevant international standards of international human rights law and IHL clearly demonstrates that States have a particular obligation to protect women and girls against sexual violence in conflict. This encompasses protection of sexual and

⁸⁰ See also United Nations Secretary General, Guidance Note of the Secretary-General: Reparations for Conflict-Related Sexual Violence (June 2014), at § 4: ‘Reparations should strive to be transformative, including in design, implementation and impact.’

⁸¹ United Nations Secretary General, Guidance Note of the Secretary-General: Reparations for Conflict-Related Sexual Violence (June 2014); *See also* UN Security Council, Resolution 2106 (2013) (Jun. 24, 2013), UN Doc. S/RES/2106. (2013); CEDAW Committee General Recommendation No. 33 *supra* note 67, at § 19 (b).

⁸² CEDAW Committee General Recommendation No. 33 *supra* note 67, at § 19 (b).

⁸³ CEDAW Committee General Recommendation No. 35 *supra* note 13, at § 33.

⁸⁴ CEDAW Committee General Recommendation No. 35 *supra* note 13, at § 28.

⁸⁵ CEDAW Committee General Recommendation No. 35 *supra* note 13, at § 24(b).

⁸⁶ *Ibid.*

reproductive rights and prohibition of crimes of sexual violence including forced abortion and forced contraception. Protection includes prevention, investigation and punishment of forced abortion and forced contraception.

51. From 1965 until the Peace Agreement in 2016, Colombia was engaged in a non-international armed conflict with the Colombian Revolutionary Armed Forces (FARC). Under international humanitarian law, international criminal law and international human rights law, States have obligations to take positive measures to prevent, investigate, punish and make reparation for sexual violence in conflict. The UN Security Council reaffirms these obligations in its Resolutions on Women Peace and Security that commenced with Resolution 1325 in 2000. Security Council Resolution 2467 on Women, Peace and Security, recognizing sexual and gender-related crimes as among the most serious crimes of international concern in the Rome Statute of the International Criminal Court⁸⁷, reaffirms States ‘primary responsibility’ to prosecute those responsible for crimes against humanity, and war crimes and recalls the applicable provisions of international law on the right to a remedy.

52. The case before this Court involves a woman, EGG, who was abducted, forcibly recruited into the armed group, required to use contraception and subjected to forced abortion. EGG was 14 years old at time of the abduction. Forced contraception and forced abortion constitute violations of sexual and reproductive rights and gender-based violence and sexual violence under international human rights law. As EEG was under the effective control of the FARC at the time of the forced abortion this may also constitute torture or cruel and inhuman treatment. Her status as possibly a former combatant within FARC is irrelevant to the applicability of human rights law. Failure to protect against gender-based violence, including in situations of armed conflict which are known to exacerbate existing gender inequalities and failure to recognize and make reparation to the victim constitute violations of international and regional human rights law for which the State is responsible.

53. The State is therefore in violation of its due diligence obligation to prevent, investigate, punish and to make reparation to EEG for acts of gender-based and sexual violence committed by

⁸⁷ UN Security Council, Resolution 2467 (2019) (Apr. 23, 2019), UN Doc. S/RES/2467 (2019).

FARC. Reparation includes access to justice and delivery of appropriate reparation for the harms suffered, including to her long term physical and mental health. Such health services must include access to sexual, reproductive and mental health services and seek to enhance women's empowerment and autonomy.

54. Furthermore, EGG was 14 years old when she was illegally and forcefully recruited by the FARC. This constitutes of itself a crime contrary to the laws and customs of war and is in violation of prohibition on forced or compulsory recruitment of children for use in armed conflict as well as constituting trafficking in persons.⁸⁸ The *Ntaganda* case by the ICC Appeals Chamber affirms that violations of IHL can be committed against a person on the same side in the conflict as the perpetrator. Accordingly, EGG is also a victim of war crimes and of conflict-associated trafficking in persons.

55. EGG is thus eligible to be recognized in the Registry of Victims as a victim of forced displacement, forced recruitment, and sexual violence during the armed conflict and to be accorded reparations appropriate to the violations she has suffered.

56. In the light of the aforementioned information, we respectfully request recognition as *amicus curiae* in the present case, in accordance with Article 13 of Decree 2591 of 1991. Given that we have proven our legitimate interest in the case, the Court should consider the information presented in this document and its attachments in making its decision.

Respectfully,



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⁸⁸ Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 25 May 2000. The Optional Protocol was ratified by Colombia on May 25, 2005.