

The Hague, 7 August 2019

Señora Magistrada:

CRISTINA PARDO SCHLESINGER

Corte Constitucional

E.S.D.

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.

The Women’s Initiatives for Gender Justice (hereinafter “WIGJ”), located in The Hague, The Netherlands, respectfully request that the Constitutional Court allow us, in our capacity as a civil society organization, 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”.

We request to intervene in the present case given our experience as an international women’s human rights organization working to achieve global gender justice through the International Criminal Court (hereinafter “ICC”) and through domestic mechanisms, including peace negotiations and justice processes in both conflict and post-conflict countries. In the course of its activities, WIGJ has been actively engaged and has collaborated with more than 6,000 grassroots partners, associates and members across multiple armed conflict areas. WIGJ has previously acted as Amicus Curiae in different cases, notably in the ICC cases of The Prosecutor v. Thomas Lubanga Dyilo and The Prosecutor v. Jean-Pierre Bemba Gombo.

WIGJ has also acquired unique expertise on conflict-related violence. We are currently finalizing *The Hague Principles on Sexual Violence* comprising guidance on what is ‘sexual violence’, in times of peace or conflict, and how to understand it better in order to avoid impunity. This guidance is the result of extensive consultations with survivors of sexual violence as well as with (national and international) civil society actors, experts, practitioners, scholars, State representatives and diplomats. It offers a culturally sensitive and gender-neutral language which makes it applicable in different settings, either in times of conflict or in times of peace, before domestic and international courts and tribunals. In order to complete the information acquired during the consultations, research was also conducted on national and international legislations and other instruments on the prevention, prohibition and accountability for sexual violence.

WIGJ’s observations will be threefold: (1) violations of reproductive rights, including forced contraception and forced abortion, are acts of sexual violence; (2) sexual violence, including forced abortion, is prohibited under international law and (3) sexual violence is prohibited even when committed within the ranks of an armed group.

1. Violations of reproductive rights, including forced contraception and forced abortion, are acts of sexual violence

Sexual violence has long been a pervasive component of conflicts throughout the world.¹ A very complex form of violence, implying humiliation, domination and destruction, sexual violence is deeply rooted in society and does not necessarily emerge with conflict, but it is rather exacerbated by it. This is also true within the Colombian context where the conflict lasted during several decades and has had disastrous consequences such as massive violations of human rights, including sexual violence at the hand of all the parties of the conflict. Despite this reality, sexual violence has not always been recognized as such and victims could not necessarily access justice.

WIGJ has compiled a non-exhaustive list of acts of sexual violence,² which comprises among others the deprivation of reproductive autonomy, such as by impregnating a person through any means, subjecting them to ‘forced pregnancy’³ or forced impregnation⁴ and enforced sterilization. It also lists more broadly prevention of a person from making choices as whether to use or not to use contraception, undergo sterilization, impregnate another person, or carry a pregnancy in their own body to term. This includes, therefore:

- Restricting choice to contraception, which covers forcing someone to use contraception *and* denying access to contraception; In Colombia, such as in the present case, the policy of forced contraception enforced by armed groups was often cumulated with the policy of forced abortion when contraception failed.⁵
- Restricting choice to carry a pregnancy, including:
 - Preventing a person from accessing abortion;
 - Requiring a person to procure an abortion;
 - Causing a person to experience a miscarriage.⁶

This approach of reproductive rights as constituting sexual violence is in line with the UN understanding of such violence.

For example, the UN Secretary General’s (hereinafter “UNSG”) reports on conflict-related sexual violence also recognize that this violence “refers to rape, sexual slavery, forced prostitution, forced pregnancy,

¹ Report of the UN Secretary-General, Conflict Related Sexual Violence, S/2019/280 of 29 March 2019.

² To be published in the aforementioned *The Hague Principles on Sexual Violence*, to be issued in September 2019.

³ Pursuant to Art. 7(2)(f) of the Rome Statute, ‘forced pregnancy’ means ‘the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy.’

⁴ Through any means.

⁵ See ABColombia, ‘Colombia: Women, Conflict-Related Sexual violence and the Peace Process’, November 2013, accessed

at <https://reliefweb.int/sites/reliefweb.int/files/resources/ABColombia_Conflict_related_sexual_violence_report.pdf>. See also [Francisco Gutiérrez Sanín](#) and [Francy Carranza Franco](#), ‘Organizing women for combat: The experience of the FARC in the Colombian war’, 17(4) *Journal of Agrarian change* (2017) 733-738.

⁶ See R. Grey, ‘The ICC’s First “Forced Pregnancy” Case in Historical Perspective’ 15(5) *Journal of International Criminal Justice* (2017) 905-930, at 911- 917.

forced abortion, enforced sterilization, forced marriage and any other form of sexual violence of comparable gravity perpetrated against women, men, girls or boys that is directly or indirectly linked to a conflict”⁷. Most of the acts listed relate to sexual and reproductive rights.

Forced abortion is broadly recognized as a form of sexual violence by civil society⁸ as well as by UN agencies⁹ and other international actors.¹⁰ In his 2014 report, the UNSG, within the findings related to Colombia on sexual violence, highlights that “UN partners have reported that a range of violations and abuses were committed, including rape, gang rape, (...) forced abortion (...)”.¹¹ This statement is also in line with reports of other international actors and initiatives,¹² including in the specific case of Colombia and the practice of the FARC.¹³

2. Sexual violence, including forced abortion, is prohibited under international law

Sexual violence, including forced abortion, has long been prohibited by international law, including humanitarian law, international human rights law and international criminal law.

Under international criminal law, “Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity” are crimes against humanity

⁷ Reports of the UN Secretary General on conflict-related sexual violence list forced abortion as a form of such violence: Doc. S/2019/180 of 29 March 2019, Para.4; Doc. S/2018/250 of 16 April 2018, Para. 2; Doc. S/2017/249 of 15 April 2017, Para. 2.

⁸ Mukwege Foundation, accessed at <<https://www.mukwegefoundation.org/the-problem/rape-as-a-weapon-of-war/forms-sexual-violence/>>; Global Justice Center, accessed at <<http://www.globaljusticecenter.net/blog/1087-holistic-care-for-victims-of-conflict-related-sexual-violence/>>; HUMAN RIGHTS WATCH, “WE’LL KILL YOU IF YOU CRY”: SEXUAL VIOLENCE IN THE SIERRA LEONE CONFLICT 25-50 (2003), accessed at <<http://www.hrw.org/sites/default/files/reports/sierleon0103.pdf>> (reporting acts of sexual violence by all actors in the conflict, including rape, rape with objects such as weapons or burning wood, “virgination” of young girls, sexual mutilation, forced pregnancies, forced abortion, and sexual slavery); International Committee for the Red Cross, accessed at <https://www.icrc.org/sites/default/files/wysiwyg/Activities/Sexual-violence/icrc_public_sexual-violence-workshop-presentation.pdf>; Sexual Violence Research Initiative, accessed at <<https://www.svri.org/faq>>.

⁹ World Health Organization, ‘World Report on Violence and Health’, p. 149, accessed at <https://www.who.int/violence_injury_prevention/violence/global_campaign/en/chap6.pdf>; NATO, accessed at <<https://www.nato.int/docu/review/2017/also-in-2017/combating-conflict-related-sexual-violence/en/index.htm>>;

¹⁰ UK Foreign & Commonwealth Office, Preventing Sexual Violence in Conflict Initiative (PSVI Protocol), ‘International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: Best Practice on the Documentation of Sexual Violence as a Crime or Violation of International Law’, Second edition, March 2017, p. 18, accessed at: <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/598335/International_Protocol_2017_2nd_Edition.pdf>.

¹¹ Report of the UN Secretary General on conflict-related sexual violence list forced abortion as a form of such violence, Doc S/2014/181 of 13 March 2014, para. 18.

¹² PSVI Protocol, *op. cit.*, p. 18, lists forced abortion as a form of sexual violence.

¹³ ‘Colombia: Women, Conflict-Related Sexual Violence and the Peace Process’, November 2013, p.1,11, accessed at <https://reliefweb.int/sites/reliefweb.int/files/resources/ABColumbia_Conflict_related_sexual_violence_report.pdf>; Amnesty International, ‘Colombia: Scarred bodies, hidden crimes, Sexual violence against women in the armed conflict, 2004, p.28, accessed at <<https://www.amnesty.org/download/Documents/92000/amr230402004en.pdf>>; Case Matrix Network, ‘Prosecuting conflict-related sexual violence in Colombia: opportunities and challenges’, 11 October 2017, accessed at <<http://blog.casematrixnetwork.org/toolkits/prosecuting-conflict-related-sexual-violence-in-colombia-opportunities-and-challenges/>>.

under article 7(1)(g) of the Rome Statute. The final phrase of the article, “any other form of sexual violence” was intended as a residual category, explicitly specifying the aspect of sexual violence.¹⁴

The Elements of Crimes, designed to assist the ICC in the interpretation of Rome Statute articles 6, 7 and 8 define any other form of “sexual violence” as:

(1) The perpetrator committed an act of a sexual nature against one or more persons or caused such 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.

(2) Such conduct was of a gravity comparable to other offences in article 7, paragraph 1(g), of the Statute.

(3) The perpetrator was aware of the factual circumstances that established the gravity of the conduct.

(4) The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

(5) The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

As such, various methods of carrying out forced abortion (such as, but not limited to inflicting trauma to the uterus, a sexual organ, the surgical removal of the fetus, or administering drugs or forcing women to take drugs), could be classified as sexual violence under the Rome Statute.

Regardless of the forced abortion method, forced abortion has been considered sexual violence. The ICTY Trial Chamber held in *Prosecutor v Kovcka* that: [...] sexual violence is broader than rape and includes such crimes as sexual slavery or molestation [...] Sexual violence would also include such crimes as sexual mutilation, forced marriage, and forced abortion as well as the gender related crimes explicitly listed in the ICC Statute as war crimes and crimes against humanity [...].¹⁵

According to the International Committee of the Red Cross (hereinafter “ICRC”), based on an extensive research on State practice, UN interventions, and international instruments, the prohibition of the use of sexual violence in an armed conflict is now a rule under customary international law.¹⁶

The UN, throughout their different organs and bodies, has many times recalled the prohibition of sexual violation in its different forms, including in the form of forced abortion which “adversely affects women’s physical and mental health”.¹⁷ Indeed, the UN General Assembly (hereinafter “UNGA”), in its Declaration

¹⁴ Anne-Marie L.M de Brouwer, ‘Sexual Violence as Crimes against Humanity’ in *Supranational Criminal Prosecution of Sexual Violence: The ICC and the Practices of the ICTY and the ICTR* (2005), 147.

¹⁵ *Prosecutor v Kovcka et al.*, (Judgement), International Criminal Tribunal for the former Yugoslavia, Trial Chamber, Case No. IT-98-30/1-T, 2 November 2001, 180 and footnote 343.

¹⁶ International Committee of the Red Cross, Customary International Humanitarian Law Database, Rule 93, ‘Rape and other forms of sexual violence are prohibited’, available at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule93.

¹⁷ UN Committee on the Elimination of Discrimination Against Women, *CEDAW General Recommendation No. 19: Violence against women*, 1992, Article 16, accessed at <<https://www.refworld.org/docid/52d920c54.html>>.

on the Elimination of Violence against Women, called for the elimination of “[...] physical, sexual and psychological violence occurring within the general community”.¹⁸ The UN Security Council (hereinafter “UNSC”) has also adopted several resolutions recognizing sexual violence as a threat to peace and security, repeatedly calling parties to armed conflict to stop committing all forms of sexual violence, especially those against women and children, and urging States to take measures to prevent these acts, investigate them and bring perpetrators to justice.¹⁹ The UNSC further called on States to “use their authority and powers to prevent sexual violence, including by combating impunity”.²⁰

In its Resolution 2106 (2013), the UNSC noted that:

sexual violence can constitute a crime against humanity or a constitutive act with respect to genocide; rape and other forms of serious sexual violence in armed conflict are war crimes;

and called on Member States to:

comply with their relevant obligations to continue to fight impunity by investigating and prosecuting those subject to their jurisdiction who are responsible for such crimes; include the full range of crimes of sexual violence in national penal legislation to enable prosecutions for such acts; recognize that effective investigation and documentation of sexual violence in armed conflict is instrumental both in bringing perpetrators to justice and ensuring access to justice for survivors.²¹

Regional instruments have also urged their signatory parties to prevent and prohibit any form of sexual violence against individuals. This includes for example the Council of Europe Convention on preventing and combatting violence against women and domestic violence, requiring States Parties to “take the necessary legislative or other measures to ensure that” conducts such as “performing an abortion on a woman without her prior and informed consent” are criminalized.²²

Sexual violence is also prohibited under various international human rights law instruments, including through other rights such as: the right to personal security, to physical, emotional and sexual integrity, the prohibition of discrimination or the prohibition of torture and cruel, inhuman or degrading treatment or punishment. Indeed, several human rights treaties do not contain specific prohibitions of sexual violence but do prohibit other rights and freedom affected by such violence. This includes two major human rights instruments: The International Covenant on Civil and Political Rights, articles 7, 9, and 20, and The Universal Declaration of Human Rights, articles 3, 5, and 7.

¹⁸ UNGA, Declaration on the Elimination of Violence against Women, Doc. A/RES/48/104, 20 December 1993, Art 2.

¹⁹ See for example UNSC, Resolution 1888 (2009), Doc. S/RES/1888(2009), 30 September 2009 and UNSC, Resolution 1960 (2010), Doc. S/RES/1960(2010), 16 December 2010.

²⁰ Resolution 1888 (2009), *op. cit.*, Para 7.

²¹ UNSC, Resolution 2106 (2013), Doc. S/RES/2106(2013), 24 June 2013, Para. 2.

²² Council of Europe, Convention on prevention and combating violence against women and domestic violence, Istanbul, 11 May 2011, art. 39.

The Convention of Belem Do Para on the Prevention, Punishment and Eradication of Violence against Women,²³ applicable in Colombia since 1996, prohibit all forms of violence against women, including sexual.²⁴ The Convention notes that “Every woman has the right to the recognition, enjoyment, exercise and protection of all human rights and freedoms embodied in regional and international human rights instruments”, including among others “the right to have her physical, mental and moral integrity respected”.²⁵ The Convention also highlights that any form of violence against women “nullifies the exercise of [her] civil, political, economic, social and cultural rights”.²⁶ The right to be in control of one’s own fecundity was also recognized by the Maputo Protocol,²⁷ alongside with other sexual and reproductive rights, implying a condemnation of any violation to such right.

Sexual violence is also a violation of international criminal law. Under the Rome Statute of the International Criminal Court (hereinafter “Rome Statute”), sexual violence can amount to crimes against humanity²⁸ and war crimes²⁹. The Rome Statute provides for these crimes to be committed in different forms: “Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity”.³⁰ The latter broad category was left open in order to include additional acts of sexual violence, such as forced abortion.³¹

²³ Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women or Convention of Belém do Pará, 9 June 1994.

²⁴ *Ibid.*, Articles 1, 2.

²⁵ *Ibid.*, Article 4.

²⁶ *Ibid.*, Article 5.

²⁷ Maputo Protocol, Protocole à la Charte africaine des droits de l’Homme et des peuples relatif aux droits des femmes, 11 July 2003, Article 14.

²⁸ Rome Statute of the International Criminal Court, Doc. A/CONF.183/9, 17 July 1998, Article 7.1.g.

²⁹ *Ibid.*, 8 (2) (b) (xxii): “Article 8: War crimes ... (2) For the purpose of this Statute, “war crimes” means: ... (b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:... (xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions; and and Article 8 (2) (e)(vi): “Article 8: War crimes ... (2) For the purpose of this Statute, “war crimes” means: ... (e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:... (vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions”;

³⁰ *Ibid.*, Article 7.1.g. The two articles regarding war crimes refer to ‘rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or **any other form of sexual violence** also constituting a grave breach of the Geneva Conventions’ and ‘rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and **any other form of sexual violence** also constituting a serious violation of article 3 common to the four Geneva Conventions’. This covers therefore international and non-international armed conflict.

³¹ The Element of crimes refer to other “acts of a sexual nature [committed] 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”. See Elements of Crimes to the Rome Statute, 2011, accessed at <https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>.

3. Sexual violence is prohibited when committed within the ranks of an armed group

Sexual violence is therefore prohibited under international law: it is prohibited against any civilian (in times of peace and conflict) and against any combatant. Furthermore, as confirmed by the ICC in the case of Bosco Ntaganda, sexual violence is also prohibited when the perpetrator and the victim pertain to the same group or rank in an armed group.

For the first time before international jurisdictions, the ICC Prosecutor charged an accused for rape and sexual slavery as war crimes committed against members of his own troops, which were in this case forcibly recruited child soldiers³². While contesting the jurisdiction of the ICC on this specific matter, the defense argued that international humanitarian law did not encompass the protection of persons taking part in hostilities against acts from other combatants “on the same side of an armed conflict”³³. The Pre-Trial Chamber II however rejected this restricted interpretation in order to ensure a broader protection of all against sexual violence, focusing on whether it can be considered that “these persons were taking direct/active part in hostilities at the time when they were themselves victims of acts of rape and/or sexual slavery”.³⁴ It was first recalled that children under the age of 15 forcibly recruited by an armed group do not lose their protection under international humanitarian law, for the simple fact that their presence in the group is a result of a proscribed conduct under international law.³⁵ The judges further stated that “[t]he sexual character of [rape and sexual slavery], which involves elements of force/coercion or the exercise of rights of ownership, logically preclude active participation in hostilities at the same time”.³⁶

Therefore, acts of sexual violence perpetrated against persons taking parts in hostilities, including within the same ranks or the same organization, is a violation of international law. If these acts are committed during or in relation of the conflict, they are committed against persons who are not at that specific time participating to the hostilities.

This interpretation by Pre-Trial Chamber II was confirmed in 2017 by Trial Chamber VI,³⁷ according to which:

While most of the express prohibitions of rape and sexual slavery under international humanitarian law appear in contexts protecting civilians and persons *hors de combat* in the power of a party to the conflict, the Chamber does not consider those explicit protections to exhaustively define, or indeed limit, the scope of the protection against such conduct. In this regard, the

³² ICC, Pre-Trial Chamber I, Situation in the Democratic Republic of the Congo, The Prosecutor v. Bosco Ntaganda, Document Containing the Charges, ICC-01/04-02/06-203, 10 January 2014.

³³ ICC, Pre-Trial Chamber II, Situation in the Democratic Republic of the Congo, the Prosecutor v. Bosco Ntaganda, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda, ICC-01/04-02/06, 9 June 2014, Para. 76.

³⁴ *Ibid.*, Para. 77.

³⁵ *Ibid.*, Para. 78.

³⁶ *Ibid.*, Para. 79.

³⁷ ICC, Trial Chamber VI, Situation in the Democratic Republic of the Congo, The Prosecutor v. Bosco Ntaganda, Second decision on the Defence’s challenge to the jurisdiction of the Court in respect of Counts 6 and 9, ICC-01/04-02/06, 4 January 2017.

Chamber recalls the Martens clause,³⁸ which mandates that in situations not covered by specific agreements, ‘civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience’.³⁹ The Chamber additionally notes that the fundamental guarantees provisions refer to acts that ‘are and shall remain prohibited at any time and in any place whatsoever’ and as such apply to, and protect, all persons in the power of a Party to the conflict.^{40, 41}

The Chamber further noted:

While international humanitarian law allows combatants to participate directly in hostilities,⁴² and as part of this participation, to target combatant members of the opposing forces as well as civilians directly participating in hostilities, and further provides for certain justifications for conduct that results in damage to property⁴³ or the death of persons that may not be legitimately targeted,⁴⁴ there is never a justification to engage in sexual violence against any person; irrespective of whether or not this person may be liable to be targeted and killed under international humanitarian law.⁴⁵

This interpretation relates to the minimum protection guaranteed to all human being, especially in times of war, under the common Article 3 of the Geneva Conventions of 1949.⁴⁶ The ICRC explains that this

³⁸ See footnote 109: “The Martens Clause was first included in the preamble to the 1899 Hague Convention on the Laws and Customs of War on Land, and has since been restated in the 1949 Geneva Conventions and 1977 Additional Protocols (see the common article on denunciation in the 1949 Geneva Conventions (i.e. Articles 63, 62, 142, and 158, respectively); and more specifically Article 1(2) of Additional Protocol I and the Preamble of Additional Protocol II). See also International Court of Justice, *Legality of the threat or use of nuclear weapons*, Advisory Opinion, 8 July 1996, paras 78 and 87; ICTY, *Prosecutor v. Furundžija*, Case No. IT-95-17/1, Trial Judgment, 10 December 1998, para. 137; and United States Military Tribunal in Nuremberg, *Krupp et al.*, Case No. 214, Judgment of 31 July 1948.

³⁹ See footnote 110: The scope (and working) of the Martens Clause as set out by the International Law Commission, in the *United Nations Report of the International Law Commission on the Work of its Forty-sixth Session*, 1994, GAOR A/49/10, p. 317.

⁴⁰ See footnote 111: Article 75 of Additional Protocol I refers to ‘a Party to the conflict’ (emphasis added) and therefore does not limit the fundamental guarantees to persons in the power of the opposing party.

⁴¹ *Ibid.*, Para. 47.

⁴² See footnote 114: See Article 43(2) of Additional Protocol I.

⁴³ See footnote 115: See, *inter alia*, Article 23(g) of the Regulations concerning the Laws and Customs of War on Land, annexed to the Hague Convention (IV) respecting the Laws and Customs of War on Land, 18 October 1907.

⁴⁴ See footnote 116: See, for example, Articles 51(5)(b) and 57(2)(b) of Additional Protocol I, which allow for a certain amount of incidental (or collateral) damage, so long as it is not excessive in relation to the concrete and direct military advantage anticipated. The principle of proportionality is part of customary international humanitarian law and also applies to the conduct of hostilities in non-international armed conflict. See, *inter alia*, Rule 14 and the underlying practice of the ICRC Study on Customary IHL.

⁴⁵ See footnote 117: In this regard, the Chamber stresses that it is analyzing whether the protection of rape and sexual slavery is limited so as to not include members of one’s own forces (in particular, children under 15 years of age) and does not need to address whether a person is protected by international humanitarian law against being killed by members of his or her own force.

⁴⁶ Geneva Conventions, 12 August 1949. Common article 3 of the four Convention states: “In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

Article offers a 'minimum yardstick' in all armed conflicts and [should be considered] as a reflection of 'elementary considerations of humanity'.⁴⁷

The Chamber further "found that the protection against sexual violence under international humanitarian law is not limited to members of the opposing armed forces, who are *hors de combat*, or civilians not directly participating in hostilities".⁴⁸

The Chamber confirmed that members of armed forces can be recognized as victims of sexual violence amounting to war crimes when perpetrators pertain to the same forces. This decision was upheld in the Judgment rendered against Bosco Ntaganda in July 2019.⁴⁹

If, in this case, the acts committed were rape and sexual slavery, the same conclusion could be reached for forced abortion, which, as we have demonstrated earlier is a form of sexual violence and is prohibited under international law.

4. Final conclusions

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,

Women's Initiatives for Gender Justice

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(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) taking of hostages;
- (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
- (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict. The Parties to the conflict should further endeavor to bring into force, by means of special agreements, all or part of the other provisions of the present Convention. The application of the preceding provisions shall not affect the legal status of the Parties to the conflict."

⁴⁷ ICRC, Commentary to the First Geneva Convention of 1949 (ICRC 2016), Para. 547.

⁴⁸ Ntaganda, Second Decision 2017, *op. cit.*, para. 53.

⁴⁹ Ntaganda, Judgment 2019, para. 965.