

Resolution 1820 – A Review of the Report of the Secretary General

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The adoption of Security Council Resolution 1820 in June 2008 was an important step in improving the Security Council's response to sexual violence in conflict. The resolution did not of course address every concern put forward by NGOs. It was felt, however, that at least some of these concerns would be addressed in the Secretary General's report requested by the Council in SCR 1820 (see paragraph 15). Primary responsibility for preparation of the report was assigned to the Department of Peacekeeping Operations with coordinated input from relevant UN agencies. Input was, to some extent, also sought from NGOs at the field and headquarters level.

That report has now been issued (S/2009/362) and it contains a number of promising recommendations – including the possibility of the appointment of a high-level official to drive forward efforts to prevent and respond to sexual violence. There are, however, some critical areas that are inadequately addressed. These gaps are all the more obvious when the content of the report is considered in light of the specifics of the Security Council's report request.

The Secretary General was requested to provide a report on implementation of Resolution 1820 including, inter alia:

- i) information on situations of armed conflict in which sexual violence has been widely or systematically employed against civilians;
- ii) analysis of the prevalence and trends of sexual violence in situations of armed conflict;
- iii) proposals for strategies to minimize the susceptibility of women and girls to such violence;
- iv) benchmarks for measuring progress in preventing and addressing sexual violence;
- v) information on [the Secretary General's] plans for facilitating the collection of timely, objective, accurate, and reliable information on the use of sexual violence in situations of armed conflict, including through improved coordination of UN activities on the ground and at Headquarters; and
- vi) information on actions taken by parties to armed conflict to implement their responsibilities as described in the resolution

Of the many critical matters to be covered by the report, it was felt by several NGOs, and communicated to those preparing the report, that the highest priority should be given to the requests for “proposals for strategies to minimize the susceptibility of women and girls to such violence” and the Secretary General's “plans for facilitating the collection of timely, objective, accurate, and reliable information on the use of sexual violence . . . including through improved coordination of UN activities on the ground and at Headquarters.” These are, unfortunately, not the strongest areas of the report. Although there are some very informative sections and some solid recommendations, the report and recommendations overall do not seem to address the Security Council's own concerns as expressed in SCR 1820. The first part of the report is devoted to setting up an understanding of how sexual violence is used and how it can be seen as a matter of international peace and security – the latter being an issue that we had hoped the very adoption of SCR 1820 had settled.

Of course there were certain unavoidable limitations on the report. First, the resolution itself limited the report to the context of situations on the agenda of the Council. Although these situations go beyond those of armed conflict, the report is focused on sexual violence “during and in the aftermath of armed conflict.” This, the report notes, is because of the focus of the resolution

itself. It also notes that sexual violence also occurs in conflict situations that are not on the Council's agenda. While seemingly obvious, it is useful, for those who would argue that the occurrence of sexual violence in conflict should be taken into account as a factor in prompting or triggering Security Council engagement, to have this acknowledged in this report.

In setting the report's parameters there is also a note that consideration must be given to "the complexities of gathering comprehensive information on sexual violence, even in the best of conditions" and that these are exacerbated in situations of conflict. The challenges in data and information collection have been of primary concern for NGOs – particularly those humanitarian organizations that know full well that without the provision of services it is unlikely that information will be revealed and that there are serious ethical and safety concerns to take into account.

Many NGOs were in fact wary of the request in SCR 1820 for this report to provide analysis of the prevalence and trends of sexual violence for the very reasons that such an analysis would likely be incomplete given the difficulties and safety and ethical concerns of gathering such information. It is very significant that the report points out (in line with earlier NGO input) that "any lack of comprehensive information should not preclude efforts to prevent and to respond to sexual violence." However, the report does not dispel the notion that prevalence data is ultimately what is needed. Given that international law is not focused solely on the "widespread" nature of attacks this should not be the only focus.

The issue of "information" gathering and transmission is of course one that initially drove advocacy efforts around SCR 1820. In advocating for an improved Security Council response to sexual violence in conflict, we noted that insufficient information in country-specific Secretary-General's reports to the Council meant that the Security Council lacked "credible" information on which to act – for example through the mandates given to peacekeeping missions or in considering arms embargoes or sanctions. It was hoped that this report would comprehensively deal with the Council's request to the SG to give information on his "plans to facilitate the collection of timely, objective and accurate and reliable information." The report does contain a section on improving data collection but this does not fully address the need for systematic and *timely* information collection.

As a "medium-term strategy" the Secretary-General states his intention "to ensure that guidance and support is provided to the country-level to improve data collection and reporting both by the various components of peacekeeping missions and United Nations Country Teams." This does not sound like a particularly concrete plan but some further explanation is provided. The report indicates the SG's intention to continue the "system" of Senior-level Mission Focal Points to "ensure more coherent, comprehensive and regular reporting" on perpetrators and actions taken to comply with international law. Although the report does not set out how this approach will be resourced, it seems the mandate of the focal point will be to cover a broad range of tasks including expanding efforts to monitor, investigate and document sexual violence and to report to UN headquarters. Perhaps most interestingly in terms of the development of systems, the Senior-level Mission Focal Points will also be expected to coordinate with the UN country team (presumably where there is an integrated mission) to review and streamline current data collection methods and databases. There is also useful information provided on efforts within the UN and with implementing partners in the field to develop appropriate and standardized instruments for data collection and analysis. All of these efforts sound promising but they do not necessarily solve the need for information to be flowing to the Security Council in a manner that is timely and enables appropriate responsive action to *protect* civilians and *prevent* sexual violence.

In fact the major recommendation in the section on improving data collection is focused on past violations rather than on the timely (real-time) provision of information that would enable a strategic response to protect and prevent – issues identified in the adoption of 1820 as requiring urgent attention. The recommendation (see para 52) is for the Security Council to “deploy an expert commission of inquiry to ongoing conflict areas to investigate and document violations.”

This idea of a commission of enquiry is first suggested earlier in the report (see paragraph 45) in the section on “United Nations efforts to prevent and respond to sexual violence” in the context of ending impunity. Although ending impunity is one important strategy for preventing future sexual violence, it is a longer-term approach and does not take the place of more immediate protection and prevention approaches. For the latter, real time strategic information is what is needed and it is not clear how a commission of enquiry will satisfy that requirement.

The report does create the link between commissions of enquiry and the need for information by noting that the most comprehensive information on perpetrators and on the use of sexual violence in conflict has come from “the ad-hoc criminal tribunals . . . hybrid . . . and international courts, transitional justice mechanisms, commissions of inquiries and special investigative missions” and that “to ensure greater accountability for sexual violence, the full range [of such mechanisms] should be employed.” This covers a huge range of possible mechanisms which each have very different characteristics and goals and possible outcomes. It also does not necessarily even cover information gathering methods that do not have criminal accountability as their end goal. Without any further consideration of the suitability of any particular solution to the problem at hand, the Secretary-General, in an apparent leap of faith goes on to say that he “*accordingly*” recommends the deployment of a “commission of enquiry, containing experts specialized in investigating sexual violence crimes, and supported by appropriate investigative capabilities and resources, to ongoing conflict areas in the DRC, Chad and Sudan.” The purpose of this commission would be:

“to investigate violations of international humanitarian, human rights and criminal law with regard to sexual violence; to identify *all those responsible* (emphasis in original) for perpetrating sexual violence and to report comprehensively on acts or omissions by States and other parties to armed conflict; and to recommend to the Council the most effective mechanisms, international and national, to ensure accountability.”

While this suggested commission of enquiry may have its usefulness in terms of addressing accountability, the problem of information flow to the Security Council to allow for more effective prevention and protection is a different one and one that is not adequately addressed by the report. Furthermore, it is not clear how such a commission of inquiry will take into account the concerns expressed by NGOs around safe and ethical data collection and, in particular, the need to provide services to survivors as a critical first step.

Many have expressed hope that issues of data collection and the provision of services will be addressed in a future report and the Secretary-General does urge the Council to “request a follow-up report to include a proposal for an appropriate mechanism or procedure of the Security Council to, inter alia, consider and act on information.” This seems promising, but the recommendation goes on to describe the information in question as concerning “measures taken by parties to armed conflict to comply with their obligations under international law, and the perpetrators of sexual violence.” It is unclear what exactly this means but what is of greater concern is that the Secretary-General goes on in this recommendation to state that “[g]iven the imperative of this issue, I am prepared to submit and annual report on implementation of resolution 1820.” It is seriously worrying if what is meant by this is that an annual report is considered to be an appropriate mechanism for the Security Council to consider and act on information. It is questionable whether an annual report really serves any purpose at all beyond being something to ensure that at least

once a year the issue of sexual violence in conflict is considered. As we have seen in relation to the broader issue of women, peace and security, annual reporting does not really take implementation forward. What is needed is a mechanism to ensure the integration of women, peace and security issues into the consideration of each and every country-specific situation and as a regular and systematic part of the Council's work.

This report does to some extent demonstrate how information might be incorporated at least in the reports of peacekeeping missions to the Council. In the section of the report devoted to "the use of sexual violence in recent and ongoing armed conflict situations" specific country examples are linked to the motivations and particular ways that sexual violence is deployed in conflict. This section does not itself say how knowing the manner in which sexual violence may be deployed could influence responses but it is a start. It is hoped that the more substantive consideration of sexual violence in country situations finds its way into more of the mission reports than is currently the case and that appropriate strategies are then developed to respond.

There are several good recommendations that touch on how sexual violence may be taken into account in the various parts of the Security Council's work. The report, for example, urges the Security Council to ensure that resolutions mandating peacekeeping missions address sexual violence – whether through mandates to respond and prevent sexual violence or to undertake monitoring and reporting responsibilities; that Sanctions Committees are mandated to address sexual violence; that the various subsidiary bodies of the Security Council consider the issue and communicate on it; and that other appropriate parts of the UN system – such as those concerned with human rights and humanitarian issues are able to regularly report to the Council

All of these recommendations are encouraging. However, it is not enough to simply recommend in this report that the Council implement these measures. There needs to be some ongoing way of ensuring that this is consistently the case. One of the long-standing recommendations made by the NGO Working Group on women, peace and security is for a mechanism within the Security Council specifically to ensure that women, peace and security issues are integrated in the Council's work. One possible option is for the Secretary-General to appoint "a high-profile and independent global advocate for women in conflict situations, such as a new Special Representative on women, peace and security." This high-level person would help support and drive efforts of the UN to implement Resolutions 1325 and 1820.

Linked to this is the need for the UN system's response to gender equality issues more generally to be improved. In this regard NGOs had hoped this report would recognize the link and indicate support for the establishment of a new UN entity for women – a discussion currently ongoing in the General Assembly. Although the Secretary-General has on several previous occasions endorsed the creation of this entity it is surprising and very disappointing that no mention of it was made in this report. Although the creation of such an entity is not within the purview of the Council, it is nonetheless an urgent need if gender equality issues – such as sexual violence in conflict – are to more effectively and strategically be addressed by the UN system.

There is much information in the report that suggests approaches to respond to sexual violence and certainly in relation to the UN a long account of all the many policy and programmatic efforts of the system. Certainly some of the efforts of UN entities and implementing partners detailed in the report sound very exciting but beyond advertising that many efforts are being made, it is not clear what lessons there are here for determining the best strategic responses. There have been many encouraging developments in recent years that are outlined in the report in relation to coordination of action. But, it is all but impossible to determine whether and by what methods or criteria the effectiveness or success of any one approach is measured. This is linked to another disappointment

of the report – the fact that the request for benchmarks to measure progress in addressing and preventing sexual violence was all but ignored.

The issue of benchmarks is mentioned in the section of the report headed “Responsibility of States and other parties in relation to sexual violence in conflict and its aftermath.” This section addresses three areas that are cited as contributing to or exacerbating sexual violence. These areas are: inadequate measures to “(a) prevent sexual violence and protect civilians; (b) combat impunity for sexual violence; and (c) address continuing discrimination against women and girls, in law and practice.” The report then purports to expand on each of these factors but seems to primarily focus on justice efforts and the need to enforce international law. There is, for example, very little attention devoted to other concrete protection or prevention strategies – there is brief mention of the need for training (on international law obligations) and of the need to address discrimination with few specific suggestions. There is also an additional, but unfortunately all too brief, section on assistance to victims. In addition, there are several legal initiatives that are mentioned without an accompanying critical comment. For example, the passage of legislation on sexual violence in the DRC in 2006 is mentioned as an encouraging development. Nothing is said, however, about the fact that this legislation is not even close to being properly implemented nor is there any comment on how having legislation that is not implemented might add to a culture of impunity.

Overall there is considerable space devoted to this section on “Responsibility of States” and although some of the information is interesting the reason for it being such a focus of this report to the Council is not clear. In respect of which of the areas of the Security Council’s reporting request does this relate? Despite the mention of benchmarks at the beginning of this section it doesn’t actually put forward any benchmarks to satisfy that particular request. Rather it states that “concrete actions and results in these areas” should be viewed by the Council “against its request in Resolution 1820 for benchmarks in measuring progress in preventing and responding to sexual violence.” Essentially it is saying, if there is progress in a) preventing sexual violence and protecting civilians; b) combating impunity for sexual violence; and c) addressing continuing discrimination then there is progress. The point, however, is that without benchmarks or indicators it is not possible to *measure* if there has been progress. It is also then not really possible to evaluate what approaches are most effective. It may have been better to simply say there had not been time or space to establish appropriate benchmarks. Without measures for progress it will be impossible to determine what strategies and approaches to addressing and preventing sexual violence are working. And preventing and properly addressing sexual violence is really the most important goal.

While the report is informative in many ways, there are serious gaps in relation to the areas that many NGOs felt were most critical. It remains the fact that there is a need for a mechanism to ensure responses from the Security Council to sexual violence in conflict that are forward looking and timely. It is also crucial that benchmarks and indicators are developed to measure progress and evaluate actions. It is important that we use the opportunities for discussion and action presented by the report and continue to emphasize the areas in which we believe real and urgent progress is needed. We now look forward to seeing concrete responses from Member States during the Open Debate of the Security Council focused on this report that is scheduled to take place on the 6th August 2009. We also look forward to Member States becoming actively engaged in any follow up actions by the Council and in ensuring that any such actions are actually responding to sexual violence and to the broader needs of women in conflict.