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Call for the United Kingdom to Protect the Right to Abortion of Female Victims of Rape and Forced Pregnancy in Armed Conflict

The Global Justice Center urges the UK—as a key leader in the United Nations (“UN”) and European Union (“EU”) and the second largest bilateral donor of humanitarian assistance in the world—to take global leadership to ensure the rights of female war rape survivors. Such leadership should include guaranteeing the right of women and girls impregnated by war rape to safe abortion and leading all donor states to comply with the Security Council’s call for an end to discriminatory medical treatment of these women and girls.

The UK position on abortion for those made pregnant by rape in armed conflict, announced on 9 January 2013—that the option of abortion is a necessary component of medical care for women and girls impregnated by war rape¹—represents an enormous global step forward in recognizing the rights of female victims of war. It is essential that the UK urgently take the next step: translate this policy commitment into concrete action.

HISTORIC NEW DEVELOPMENTS

- The Security Council, on June 24, 2013—in a debate and resolution driven by the UK in its role as president—**called for the UN and donor countries to ensure that girls and women raped in armed conflict are provided “non-discriminatory and comprehensive health services, including sexual and reproductive health.”**² This mandate, contained in Resolution 2106, was motivated by a horrific reality: girls and women impregnated by rape in armed conflict are routinely denied abortions in humanitarian medical facilities.
- **The UN Secretary-General, in his October 2013 report, called for the Security Council to ensure “access to services for safe termination of pregnancies resulting from rape, without discrimination and in accordance with international human right and humanitarian law.”**³ This language in the Secretary-General’s report to the Security Council reaffirms that the Geneva Conventions, not local laws, govern medical care for girls and women raped in war.

THE ROBUST GLOBAL LEADERSHIP OF THE UNITED KINGDOM ON BEHALF OF WOMEN AND GIRLS IN ARMED CONFLICT

- The UK in January 2013 acknowledged the rights of women and girls raped in war to non-discriminatory medical care, including access to abortion, under common Article 3 of the Geneva Conventions.⁴
- As part of its initiative on Preventing Sexual Violence in Conflict, the UK led the G8 in passing the *G-8 Declaration on Preventing Sexual Violence in Conflict* in April 2013,

in which each foreign minister pledged that the “provision of appropriate and accessible services, including health, psychosocial, legal and economic support is essential to support the rehabilitation and reintegration of victims of sexual violence in armed conflict.”⁵

- The UK presented a *Declaration of Commitment to End Sexual Violence in Conflict* to the UN General Assembly in September 2013, and to date 113 countries have signed onto it, agreeing to “[p]rovide better, more timely and comprehensive assistance and care, including health and psychosocial care that addresses the long-term consequences of sexual violence in conflict, including to female, male and child victims and their families, including children born as a result of sexual violence.”⁶

UK’S HUMANITARIAN AID PARTNERS DISCRIMINATE AGAINST FEMALE WAR RAPE VICTIMS IN VIOLATION OF THE GENEVA CONVENTIONS

Currently, nearly all of the UK’s humanitarian aid for victims of armed conflict is given to humanitarian aid entities which discriminate against female rape victims by denying them medically-needed abortions (see Annex II: Top Recipients of UK Humanitarian Aid in 2012, page 8).

Common Article 3 and other provisions of the Geneva Conventions provide that all persons “wounded and sick in armed conflict” be provided comprehensive and non-discriminatory medical care determined solely by their condition, and that the **outcome** of medical care for women not be “less favorable” than for men.⁷ Denying abortions to women and girls raped in armed conflict, while providing male rape victims and all other persons “wounded and sick” in armed conflict the medical care required by their condition, violates these mandates. Further, forcing female victims of war rape to bear the children of their rapists violates the common Article 3 prohibition against torture and cruel treatment.

TWO MAJOR BARRIERS THAT HINDER THE ABILITY OF THE UK TO PROTECT THE RIGHTS OF FEMALE WAR RAPE VICTIMS TO ABORTIONS

1. **The United States attaches a ban on discussing or providing abortions to all US humanitarian aid, including aid to organizations providing medical care in war zones, such as the International Committee of the Red Cross (“ICRC”) and UN entities. These same organizations are also funded by the UK, and—because US funds are not segregated—the abortion ban is applied to their entire operations.**

For example, the UK recently pledged £5 million in humanitarian aid for the Central African Republic (“CAR”),⁸ where rape is an endemic feature of its longstanding internal armed conflict.⁹ The major entities dispensing aid in CAR, as well as their local partners, all operate under the US abortion ban despite the fact that the government of CAR responded to the horrors of war rape by legalizing abortion in cases of rape. UK funding to CAR, however well-meaning, is compromised by the US abortion ban.¹⁰

2. **Although UK policy is clear that the provision of humanitarian aid for victims of armed conflict is governed by the Geneva Conventions,¹¹ this is not observed in practice.** Neither the Department for International Development (“DfID”) nor the Foreign Ministry distinguishes aid for victims of armed conflict from aid to victims of natural disasters. This results in female victims of war rape being denied their supreme right to medical care, including abortions when medically needed, under the Geneva Conventions¹² as well as their right to benefit from the duty of doctors treating persons

“wounded and sick” in armed conflict not to omit, for any reason, needed medical treatment for war victims.¹³

RECOMMENDATIONS FOR IMMEDIATE UK ACTION

Now is the time for the UK to take the lead on donor state compliance with Security Council Resolution 2106.

1. The UK should make a **firm bilateral request** for the US to remove its abortion ban on humanitarian aid and protect the rights of girls and women raped in armed conflict to non-discriminatory medical care, including access to abortion, under common Article 3 of the Geneva Conventions.
2. The UK should **publicly support access to safe abortions for female war rape victims**, including at the upcoming Security Council open debate on women, peace and security in October 2013, affirming the UK’s commitment to women’s and girls’ rights to non-discriminatory medical care under the Geneva Conventions.¹⁴
3. DfID should adopt an **updated policy on abortion and the Geneva Conventions**, to serve as a model for all countries. (See Suggested Model Policy, below).

SUGGESTED MODEL POLICY FOR THE UK: ABORTION & THE GENEVA CONVENTIONS

Women and children who are raped and impregnated in situations of armed conflict have increased rates of maternal morbidity and mortality, including from the risks of unsafe abortions. Abortion services and counseling constitute medically appropriate, and often life-saving, interventions for impregnated female survivors of war rape.

States in armed conflict have the primary obligation to provide medical care for persons “wounded and sick” in armed conflict in their territory, in accord with the mandates of common Article 3 of the Geneva Conventions, Additional Protocols I and II, and customary international law. However, all states providing humanitarian aid for war victims are obligated under common Article 1 of the Geneva Conventions to ensure such aid is in strict compliance with international humanitarian law.

The denial of abortion to women and girls who become pregnant as a result of rape in armed conflict violates common Article 3 of the Geneva Conventions and the Additional Protocols, which mandate that victims of armed conflict be given the full range of medically appropriate care without discrimination due to sex, and that in no case can the outcome of medical care for women be less favorable than for men. Abortion denial constitutes torture or cruel, inhuman or degrading treatment under common Article 3 of the Geneva Conventions. Girls and women denied abortions in humanitarian settings are entitled to redress, including reparations and support for bearing unwanted children from rape.

4. The UK should require its humanitarian aid partners to comply, where relevant, with the Geneva Conventions and Security Council Resolution 2106, by ensuring that medical care for female victims of war rape includes access to safe abortion. In accord with the June 2013 recommendation of the House of Commons’ Select Committee on International Development, **all UK aid partners should “inform girls and women raped and impregnated in armed conflict of their rights under IHL [international humanitarian law] including their right to abortion as a component of non-discriminatory medical care.”**¹⁵

5. The UK should require its humanitarian aid partners to **segregate UK aid from that of the US**, as recommended in two European Parliament resolutions.¹⁶ On 13 June 2013, the EU passed a resolution calling for EU humanitarian aid to be segregated from US aid in order to “ensure[e] access to abortion for women and girls who are victims of rape in armed conflicts.”¹⁷ This was the second such resolution; the first, on 13 March 2012, called for abortion access for war rape victims, citing EU-Member States’ obligations under Resolution 1325.¹⁸
6. The UK should make clear that the Foreign & Commonwealth’s *Torture and Mistreatment Reporting Guidance*¹⁹ **requires reporting on the denial of abortion to female victims of war rape as a form of torture.**
7. The UK should take innovative steps to **immediately provide critically needed abortions to women and girls surviving war rape**, including by:
 - a. “Buying up” the local medical providers on the ground in conflict areas so that they do not need funds from the United States;
 - b. Funding clinics or mobile facilities staffed with international doctors to provide safe abortion services, as was done in 1971 for female victims of the mass rapes in Bangladesh;
 - c. Arranging medical evacuations out of conflict zones for pregnant war rape victims to get safe abortions;
 - d. Funding organizations working in conflict areas that will provide abortions for rape victims. Currently, Médecins Sans Frontières is the only recipient of UK humanitarian aid which, as a matter of principle, refuses to take US funds and which, as a matter of medical ethics and international law, provides abortions to girls and women raped in armed conflict in all its operations regardless of national laws.²⁰

Such UK actions will build upon increasing EU and country-level support for abortion access for women and girls raped in armed conflict. For further examples of this growing support, please see the compendium of UK, EU and other international laws supportive of a right to abortion for women and girls raped in war, prepared by the Global Justice Center, at <http://globaljusticecenter.net/index.php/publications/advocacy-resources/380-97-uk-compendium>.

“Girls and women subject to rape used as a weapon of war are persons ‘wounded and sick’ in armed conflict, guaranteed absolute rights to non-discriminatory, appropriate and necessary medical care under the Geneva conventions. Yet these women war victims are routinely denied, by blanket exclusions, life and health-saving abortions in humanitarian settings, leaving them with the terrible ‘choice’ of risking an unsafe abortion, suicide or being forced to bear the child of their rapists.”

- Lord Lester of Herne Hill

ANNEX I: BACKGROUND BRIEFINGS ON UK AND INTERNATIONAL LAW AND PRACTICE

ABORTION AND INTERNATIONAL HUMANITARIAN LAW

Girls and women raped in armed conflict are persons “wounded and sick” entitled “to the fullest extent practicable and with the least possible delay the medical care and attention required by their condition,” with no adverse distinction made “on any grounds other than medical ones,” under common Article 3 of the Geneva Conventions, its Additional Protocols and customary international law.²¹

The former head of the Legal Division of the ICRC, Prof. Louise Doswald-Beck, in a letter to President Obama, detailed how the US abortion ban violates common Article 3 of the Geneva Conventions, including because the exclusion of abortion—a service needed only by females—from comprehensive medical care provided to all persons “wounded and sick” in armed conflict is unlawful discrimination based on sex.²²

‘[D]istinctions on the basis of sex are . . . prohibited only to the extent that they are unfavourable or adverse,’ favourable distinctions are permissible, and indeed required, to ensure the best possible treatment for each person. **Thus, under both IHL [international humanitarian law] and human rights law, non-discrimination signifies that the outcome for each gender must be the same, not that the treatment must be identical. Therefore, as rape can result in additional consequences for women and girls compared to men and boys, most notably pregnancy, these additional consequences necessitate distinct medical care, including the option of abortion.**²³

The use of a single humanitarian aid standard for both conflict and non-conflict crises also removes the rights of female conflict victims to benefit from the legal protections given to doctors treating persons “wounded and sick” in armed conflict. Doctors treating war victims are protected “against any compulsion to perform acts - or refrain from performing acts - contrary to the patient's interests.”²⁴ The corollary of this protection is that doctors must provide all the medical services required by a victim’s condition, **in all circumstances**. In addition, doctors treating war victims are protected with immunity from prosecution under domestic laws,²⁵ including abortion laws. These legal protections are not given to doctors providing medical care for girls and women raped in non-conflict crises.

The non-discriminatory medical mandates of the Geneva Conventions are **absolute legal obligations** rather than discretionary, which the UK has failed to explicitly recognize in its policy for females raped and impregnated in armed conflict. For instance, the UK has stated the following on the right to access to safe abortion: “In conflict situations where denial of abortion in accordance with an absolute national law prohibition would threaten the women’s or girls’ life, or cause unbearable suffering, international humanitarian law principles **may** justify offering an abortion rather than perpetrate what amounts to inhuman treatment in the form of an act of cruel treatment or torture.”²⁶ The term “may” manifests an incorrect understanding of the absolute nature of states’ international humanitarian law obligations toward those wounded in war, including female victims of war rape.

Further, despite the UK policy announced on 9 January 2013, which acknowledges that international humanitarian law trumps national law with respect to abortion services for war rape victims, this has not yet been translated into DfID policy. The current DfID policy

instead limits the provision of abortion services to situations where abortion is legal under national law.²⁷

During times of armed conflict, rights guaranteed by the Geneva Conventions cannot be undermined by national law, because the laws of war are explicitly designed to apply uniformly and universally, taking precedence over national laws. The UK acknowledges this in its *Joint Service Manual of the Law of Armed Conflict*, which provides that the provisions of common Article 3 of the Geneva Conventions “do not preclude the application of the relevant national law—except to the extent that a particular rule of national law directly conflicts with any of the provisions of Common Article 3. . .”²⁸ (as do national laws that prohibit abortion without exception).

Denying abortions to women and girls raped in war also violates international law on torture. Sexual violence, including war rape, has been deemed torture by the Criminal Tribunal for the former Yugoslavia as well as the UN Special Rapporteur on Torture.²⁹ As victims of torture, women and girls raped and forcibly impregnated in armed conflict are entitled to full rehabilitative medical care, which would include the option of abortion.³⁰ Further, the UN Committee against Torture and the UN Human Rights Committee have both held that denying abortions to victims of rape (or to those whose pregnancies risk their lives, as is frequently the case for war rape survivors) can be torture or cruel, inhuman or degrading treatment.³¹

UK DOMESTIC LAW AND ACCESS TO ABORTIONS FOR VICTIMS OF WAR RAPE

As a leader in promoting respect for international law, the UK has thoroughly implemented domestically its obligations under international humanitarian law through the *Geneva Conventions Act* and the *Joint Service Manual of the Law of Armed Conflict*.³²

The *Geneva Conventions Act* affirms that complete medical treatment and protection of the “wounded and sick” is required by international humanitarian law and that no discrimination or distinction may be made other than for medical needs. The exclusion and denial of abortion to girls and women raped in armed conflict undermines the obligations put forth in this act.

These provisions are reinforced by the *Joint Service Manual of the Law of Armed Conflict*, which makes clear that: (1) all persons “wounded and sick” in armed conflict must be provided with “humane treatment and, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition;”³³ and that (2) “persons engaged in medical activities shall neither be compelled to perform acts or to carry out work contrary to, nor be compelled to refrain from acts required by the rules of medical ethics, other rules designed for the benefit of the wounded and sick, or the Protocol.”³⁴ The Manual also makes clear that “women must be treated with special respect and no less favorably than men.”³⁵

These clear legal directives implementing the UK’s obligations under international humanitarian law provide the required framework to ensure that UK policies and practice do in fact ensure the rights of women and girls raped in armed conflict.

The UK position on abortion for those made pregnant by rape in armed conflict, announced on 9 January 2013,³⁶ is clear: “[W]here there is a direct conflict between national law and the fundamental obligation on parties to a conflict under Common Article 3 of the Geneva Conventions, the obligation is to comply with Common Article 3. . . . The denial of abortion in a situation that is life threatening or causing unbearable suffering to a victim of armed

conflict may therefore contravene Common Article 3. Therefore, an abortion may be offered despite being in breach of national law by parties to the conflict or humanitarian organisations providing medical care and assistance.”³⁷

UK’S HUMANITARIAN AID PARTNERS DO NOT COMPLY WITH THE GENEVA CONVENTIONS

The UK is the “second largest government provider of humanitarian aid,” second only to the United States, and it exercises “a leading influence in terms of humanitarian policy and delivery” around the globe.³⁸

The UK’s partner of choice for humanitarian aid to persons “wounded and sick” in armed conflict is the ICRC.³⁹ Despite the UK’s explicit policies on safe abortion and gender equality, the ICRC, which receives over 20% of its annual budget from the United States,⁴⁰ operates under the US abortion ban, stating in its internal operational guidelines that “the ICRC’s general position . . . is that its medical staff do not perform abortions.”⁴¹

The ICRC further advises that medical care for females impregnated by rape in armed conflict is governed by domestic abortion laws, not the medical needs of the patient as required by the Geneva Conventions.⁴² This policy contravenes the very purpose of international humanitarian law, which is to establish universal standards of care for conflict victims.

The chart below, using 2012 figures, demonstrates that all but two of the UK’s major humanitarian recipients compromise the integrity of their UK funding by applying the abortion ban attached to US funding to their entire operations.⁴³

Organizations receiving US humanitarian aid, except for the United Nations Population Fund,⁴⁴ **could** segregate their US funds from those of other donors—in order to provide abortions with non-US funds—but, with the exception of the World Health Organization,⁴⁵ **they currently do not.**

ANNEX II: TOP RECIPIENTS OF UK HUMANITARIAN AID IN 2012⁴⁶

Humanitarian Organisations Funded by UK (2012) ⁴⁷	UK Funding (USD) ⁴⁸	US-Funded with abortion speech/service ban ⁴⁹	US Funds segregated from UK funds
World Food Programme	160,091,367	Yes	No
Common Humanitarian Fund (CHF)	155,754,910	No	N/A ⁵⁰
Central Emergency Response Fund (CERF)	95,148,000	Yes	No
United Nations Children's Fund	55,056,576	Yes	No
United Nations High Commissioner for Refugees	52,235,477	Yes	No
Office for the Coordination of Humanitarian Affairs	38,264,880	Yes	No
International Committee of the Red Cross International Federation of Red Cross and Red Crescent Societies Total Aid to Red Cross	33,540,271 1,413,570 34,953,841	Yes	No
Emergency Response Fund (OCHA)	23,955,652	No	N/A ⁵¹
Save the Children	17,322,766	Yes	No
OXFAM GB	15,530,103	Yes	No
International Organization for Migration	15,347,333	Yes	No
World Health Organization	9,123,011 ⁵²	No	Yes ⁵³
Health And Nutrition Development Society	6,295,707	No	N/A
Médecins Sans Frontières	4,930,292 ⁵⁴	No ⁵⁵	N/A
Medical Emergency Relief International	4,032,260	Yes	No
OXFAM International	2,777,778	No	N/A
Norwegian Refugee Council	2,485,703	Yes	No
International Rescue Committee	2,055,252	Yes	No
CARE International	1,966,572	Yes	No
Trocaire	1,832,541	No	N/A
Turkish Red Crescent Society	1,615,509	No	N/A
Concern Worldwide	1,615,508	Yes	No
Adventist Development and Relief Agency	1,571,432	Yes	No
Médecins du Monde	1,522,817	No	N/A
Health Poverty Action	1,376,107	No	N/A
Plan International	807,754	Yes	No

Islamic Relief Worldwide	803,391	Yes	No
United Nations Dept of Safety and Security	776,320	Yes	No
International Medical Corps	484,653	Yes	No
Office of the Humanitarian Coordinator	389,408	Yes	No
TEARFUND	138,608	Yes	No

ENDNOTES

¹ See United Kingdom (“UK”) Parliament, *Question for Short Debate: Rape in Armed Conflict* (9 Jan. 2013), available at http://www.publications.parliament.uk/pa/ld201213/ldhansrd/text/130109-0002.htm#13010975_000273 [hereinafter “UK Question for Short Debate”].

² United Nations (“UN”) Security Council Resolution 2106, U.N. Doc. S/RES/2106 (2013), ¶ 19.

³ See *Advance copy of Report of the Secretary-General on women and peace and security* (4 Sept. 2013), at 65-66 (to be issued as U.N. Doc. S/2013/515).

⁴ See Department for International Development (“DfID”), *Response to the Woman’s Hour debate on BBC Radio 4 around access to abortion services in conflict zones* (11 Feb. 2013), available at <https://www.gov.uk/government/news/abortion-services-in-conflict-situations> (“On access to abortion services, UK policy is clear: the UK development budget can be used, without exception, to provide safe abortion care where necessary, and to the extent allowed by national laws. In conflict situations where denying an abortion in accordance with national law would threaten the mother’s life or cause unbearable suffering, international humanitarian law principles may justify performing an abortion rather than extending what amounts to inhumane treatment in the form of an act of cruel treatment or torture.”).

⁵ See Foreign & Commonwealth Office, *Declaration on Preventing Sexual Violence in Conflict*, Adopted in London on 11 April 2013, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/185008/G8_PSVI_Declaration_-_FINAL.pdf, ¶ 8; see also Foreign & Commonwealth Office, News Story: *G8 Declaration on Preventing Sexual Violence in Conflict* (11 Apr. 2013), available at <https://www.gov.uk/government/news/g8-declaration-on-preventing-sexual-violence-in-conflict>.

⁶ See *A Declaration of Commitment to End Sexual Violence in Conflict*, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/244849/A_DECLARATION_OF_COMMITMENT_TO_END_SEXUAL_VIOLENCE_IN_CONFLICT_TO_PRINT....pdf; see also Foreign & Commonwealth Office, Press Release: *113 countries pledge action to end sexual violence in conflict #timetoact* (24 Sept. 2013), available at https://www.gov.uk/government/news/113-countries-pledge-action-to-end-sexual-violence-in-conflict-timetoact?utm_campaign=JoanneClarke&utm_source=twitterfeed&utm_medium=twitter.

⁷ See Global Justice Center, *The Right to an Abortion for Girls and Women Raped in Armed Conflict* (Feb. 2011), available at <http://globaljusticecenter.net/index.php/publications/briefs-and-white-papers/2-the-right-to-an-abortion-for-girls-and-women-raped-in-armed-conflict-february-2011>, at 8 (citing Protocol Additional (I) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts [hereinafter “Protocol I”], (1979) 1125 U.N.T.S. 3, Art 10; Protocol Additional (II) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts [hereinafter “Protocol II”], (1979) 1125 U.N.T.S. 609, Art. 7); see also Letter from Prof. Louise Doswald-Beck, Former Head, Legal Division, International Committee of the Red Cross, to President Obama (10 Apr. 2013), at 2, available at http://www.globaljusticecenter.net/index.php?option=com_mtree&task=att_download&link_id=321&cf_id=34 [hereinafter “Letter from Prof. Louise Doswald-Beck”].

⁸ See Glenys Kinnock, *US abortion ban should not be foisted on Central African Republic*, THE GUARDIAN (7 Aug. 2013), available at <http://www.theguardian.com/global-development/poverty-matters/2013/aug/07/us-abortion-ban-central-african-republic>.

⁹ See UN Security Council, *Report of the Secretary-General on the situation in the Central African Republic*, U.N. Doc. S/2013/261 (3 May 2013), ¶ 40 (“The prevalent state of lawlessness has had a devastating impact on women and girls in the Central African Republic. There have been ongoing and continuous reports of sexual violence, including rape, gang rape and sexual slavery.”).

¹⁰ See Kinnock, *supra* note 8.

¹¹ See UK Question for Short Debate, *supra* note 1 (column numbers omitted) (“DfID requires that all UK-funded humanitarian partners abide by humanitarian principles, including non-discriminatory provision of assistance. In conflict situations, DfID expects all medical humanitarian agencies to observe and abide by international law, including international humanitarian law, in the activities that they provide.”); see also UK Ministry of Defence, *The Manual of the Law of Armed Conflict* (1 July 2004), available at <http://www.mod.uk/NR/rdonlyres/82702E75-9A14-4EF5-B414-49B0D7A27816/0/JSP3832004Edition.pdf> [hereinafter “UK Manual of Law of Armed Conflict”], ¶ 7.3.2 (“[The wounded and sick] are entitled to respect and protection, humane treatment, and, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. . . . The only distinction which is permitted in dealing with the wounded or sick is that founded on real medical need.”) (citing Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, (1950) 75 U.N.T.S. 31 [hereinafter “Geneva Convention I”], Art. 12; Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, (1950) 75 U.N.T.S. 85 [hereinafter “Geneva Convention II”], Art 12; Geneva Convention (III) Relative to the Treatment of Prisoners of War, (1950) 75 U.N.T.S. 135 [hereinafter “Geneva Convention III”], Art. 13; Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, 75 U.N.T.S. 287 [hereinafter “Geneva Convention IV”], Art. 27; Protocol I, *supra* note 7, Arts. 9, 10, 11); ¶ 15.46(a) (“Under no circumstances shall any person be punished for having carried out medical activities

compatible with medical ethics, regardless of the person benefiting therefrom.' . . . Persons engaged in medical activities shall neither be compelled to perform acts or to carry out work contrary to, nor be compelled to refrain from acts required by, the rules of medical ethics or other rules designed for the benefit of the wounded and sick . . .") (citing Protocol II, *supra* note 7, Arts. 10(1) and 10(2)); ¶ 13.129 ("Women must be treated with respect, with due regard to their sex and no less favourably than men.") (citing Geneva Convention II, Art. 12; Protocol I, *supra* note 7, Art. 10).

¹² See generally Global Justice Center, *supra* note 7.

¹³ See International Committee of the Red Cross ("ICRC"), Commentary to Protocol I: General protection of medical duties, available at <http://www.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?viewComments=LookUpCOMART&articleUNID=B0BF1D4A2800D97FC12563CD0051D841>; see also Protocol I, *supra* note 11, Art. 16 ("Persons engaged in medical activities shall not be compelled to perform acts or to carry out work contrary to the rules of medical ethics or to other medical rules designed for the benefit of the wounded and sick or to the provisions of the Conventions or of this Protocol, or to refrain from performing acts or from carrying out work required by those rules and provisions."); Protocol II, *supra* note 11, Art. 10 ("Persons engaged in medical activities shall neither be compelled to perform acts or to carry out work contrary to, nor be compelled to refrain from acts required by, the rules of medical ethics or other rules designed for the benefit of the wounded and sick, or this Protocol.").

¹⁴ Such support would affirm the Secretary-General's recognition of the right to "safe termination of pregnancies" under international humanitarian law. See Report of the Secretary-General on women and peace and security, *supra* note 3, at 65-66. The Netherlands, but so far not the UK, has directly linked the right to safe abortion with international humanitarian law in front of the Security Council. See Security Council, 6984th meeting, U.N. Doc. S/PV.6984 (24 June 2013), at 48 ("[T]here is a need for a comprehensive multisectoral response for survivors, including medical care, in accordance with international humanitarian law, and access to emergency contraception, [and] safe abortion . . .").

¹⁵ See House of Commons International Development Committee, Second Report of Session 2013-14, *Violence Against Women and Girls*, HC 624 (4 June 2013), ¶¶ 80-82, available at <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmintdev/107/10709.htm> (citing Global Justice Center, *Written evidence submitted by Global Justice Centre to International Development Committee* (29 Jan. 2013), available at <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmintdev/107/107vw11.htm>).

¹⁶ See *infra* notes 17 and 18 and accompanying text.

¹⁷ European Parliament resolution of 13 June 2013 on the Millennium Development Goals – defining the post-2015 framework, ¶ 31, available at <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2013-283>.

¹⁸ European Parliament resolution of 13 March 2012 on equality between women and men in the European Union – 2011, ¶ 61, available at <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2012-0069&language=EN&ring=A7-2012-0041> ("Reminds the Commission and the Member States of their commitment to implement UN Security Council Resolution 1325 on Women, Peace and Security, and urges the provision of EU humanitarian aid to be made effectively independent from the restrictions on humanitarian aid imposed by the USA, in particular by ensuring access to abortion for women and girls who are victims of rape in armed conflicts . . .").

¹⁹ See Foreign & Commonwealth Office, *Torture and Mistreatment Reporting Guidance* (Mar. 2011), available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/35450/torture-mistreatment-reporting-guidance.pdf; see also Foreign & Commonwealth Office, *FCO Strategy for the Prevention of Torture: 2011 – 2015* (Oct. 2011), available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/35449/fcostrategy-tortureprevention.pdf.

²⁰ Médecins Sans Frontières does not take US funding so as to retain the integrity of its abortion-related work. See Médecins Sans Frontières, *Frequently Asked Questions*, available at <http://www.doctorswithoutborders.org/donate/faq/> ("Doctors Without Borders has not received or solicited funding from the US Government since 2002."); see also Médecins Sans Frontières, *International Activity Report 2005: Seeing through the obstacles to the victims: MSF's medical responsibility to victims of sexual violence*, available at <http://www.doctorswithoutborders.org/publications/ar/report.cfm?id=3249> ("Medical responsibility is primarily a matter between patient and practitioner. The obligation to give resources – even when operating in dangerous situations – is above all the obligation to provide care and to ensure its quality. In cases of sexual violence, it could be a matter of giving antibiotic treatment to combat a sexually transmitted infection, giving prophylaxis treatment to prevent HIV infection, providing medicine to avoid pregnancy, [or] performing an abortion or reconstructive surgery . . .").

²¹ See Global Justice Center, *supra* note 7, at 8 (citing Protocol I, *supra* note 7, Art. 10; Protocol II, *supra* note 7, Art. 7).

²² See Letter from Prof. Louise Doswald-Beck, *supra* note 7, at 2.

²³ *Id.*; see also ICRC, Customary IHL Database, Rule 88. Non-Discrimination, available at http://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter32_rule88.

²⁴ See ICRC, Commentary to Protocol I: General protection of medical duties, available at <http://www.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?viewComments=LookUpCOMART&articleUNID=B0BF1D4A2800D97FC12563CD0051D841>; see also Protocol I, *supra* note 7, Art. 16 (“Persons engaged in medical activities shall not be compelled to perform acts or to carry out work contrary to the rules of medical ethics or to other medical rules designed for the benefit of the wounded and sick or to the provisions of the Conventions or of this Protocol, or to refrain from performing acts or from carrying out work required by those rules and provisions.”); Protocol II, *supra* note 7, Art. 10 (“Persons engaged in medical activities shall neither be compelled to perform acts or to carry out work contrary to, nor be compelled to refrain from acts required by, the rules of medical ethics or other rules designed for the benefit of the wounded and sick, or this Protocol.”).

²⁵ See Protocol I, *supra* note 7, Art. 16 (“Under no circumstances shall any person be punished for carrying out medical activities compatible with medical ethics . . .”); Protocol II, *supra* note 7, Art. 10 (“Under no circumstances shall any person be punished for having carried out medical activities compatible with medical ethics . . .”).

²⁶ See DfID, *supra* note 4.

²⁷ See DfID, *Safe and unsafe abortion: Practice Paper, DFID Policy* (July 2011), at 11; see also Letter from Andrew Mitchell, Secretary of State for International Development (5 Jul. 2012) (on file with Global Justice Center) (“UK aid without exception can be used to provide safe abortion care, where necessary and **to the extent allowed by national laws**, for victims of rape in conflict zones.”) (emphasis added).

²⁸ See UK Manual of Law of Armed Conflict, *supra* note 11, ¶ 15.4.1.

²⁹ See, e.g., International Criminal Tribunal for the former Yugoslavia, *Prosecutor v. Zdravko Mucić, Hazim Delić, Esad Landžo & Zejnil Delalić (Čelebići Camp)*, Appeals Chamber Judgement of 20 February 2001, IT-96-21, ¶ 501 (finding that a woman prisoner’s rape, which was committed by an armed official with “discriminatory intent” and which “caused [her] severe mental and physical pain and suffering,” constituted torture); Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, U.N. Doc. A/HRC/7/3 (15 Jan. 2008), ¶ 36 (noting that “rape can cause suffering that even go[es] beyond the suffering caused by classic torture . . . [including because rape victims] may experience unwanted pregnancies, miscarriages, forced abortions or denial of abortion”) (internal citations omitted).

³⁰ Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides that victims of torture are to be given the “means for as full rehabilitation as possible.” *Convention Against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment*, 1456 U.N.T.S. 85, Art. 14 (10 Dec. 1984). In addition, the Istanbul Protocol, which sets out guidelines for doctors and others, provides that doctors treating torture victims have a “duty to act only in the patient’s interest . . . regardless of other considerations, including the instructions of employers, prison authorities or security forces,” and they must “have the professional independence to represent and defend the health needs of patients against all who would deny or restrict needed care for those who are sick or injured.” See UN Office of the High Commissioner for Human Rights, *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“Istanbul Protocol”)*, U.N. Doc. HR/P/PT/8/Rev.1, at 13 (2004) (internal citations omitted).

³¹ See UN Committee Against Torture, *Concluding Observations of the Committee against Torture: Nicaragua*, U.N. Doc. CAT/C/NIC/CO/1, ¶ 16 (10 June 2009); UN Committee Against Torture, *Concluding Observations of the Committee against Torture: Peru*, U.N. Doc. CAT/C/PER/CO/4, ¶ 23 (25 July 2006); UN Human Rights Committee, *KL v. Peru*, U.N. Doc. CCPR/C/85/1153/2003, ¶ 6.6 (22 Nov. 2005); UN Human Rights Committee, General Comment 28: *Equality of Rights between women and men*, ¶ 1 (29 Mar. 2000) (which asks State parties to include information on if a state gives “access to safe abortion to women who have become pregnant as a result of rape” in order to assess compliance with article 7 of the Covenant—the prohibition of torture).

³² See Geneva Conventions Act (1957), available at <http://www.legislation.gov.uk/ukpga/Eliz2/5-6/52>; UK Manual of Law of Armed Conflict, *supra* note 11.

³³ UK Manual of Law of Armed Conflict, *supra* note 11, ¶ 7.3.2.

³⁴ UK Manual of Law of Armed Conflict, *supra* note 11, ¶ 15.46(a).

³⁵ UK Manual of Law of Armed Conflict, *supra* note 11, ¶ 7.3.

³⁶ See UK Question for Short Debate, *supra* note 1.

³⁷ See *id.*

³⁸ See Global Humanitarian Assistance, Country Profile: United Kingdom, available at <http://www.globalhumanitarianassistance.org/countryprofile/united-kingdom-2>.

³⁹ See UK Question for Short Debate, *supra* note 1 (“The ICRC is DfID’s partner of choice in conflict situations and the largest recipient of DfID aid to humanitarian organisations.”).

⁴⁰ See ICRC, *Annual Report 2012*, at 75, available at <http://www.icrc.org/eng/assets/files/annual-report/icrc-annual-report-2012.pdf> (“The United States of America . . . remained the ICRC’s largest donor, accounting for 20.6% (CHF 207.9 million) of all contributions received . . .”).

⁴¹ ICRC, *ICRC Frame of Reference on Sexual Violence in Armed Conflict and Other Situations of Violence*, at 93 (Mar. 2009).

⁴² See *id.* (requiring that, with regard to abortion, all ICRC staff “ac[t] in strict compliance with national legislation”). The ICRC implicitly reaffirms this policy in its Antenatal Guidelines, stating the following in reference to a woman impregnated by rape (or a pregnant woman who is raped): “Depending on the local circumstances, the culture and the religion of the woman, the national health services and policies, etc., it may or may not be possible to help the woman concerned.” See ICRC, *Antenatal Guidelines for Primary Health Care in Crisis Conditions* (May 2005), at 160, available at http://www.icrc.org/eng/assets/files/other/icrc_002_0875.pdf. As to IHL’s requirement that medical decisions be based solely on the medical needs of the patient, see *supra* note 21 and accompanying text.

⁴³ The World Health Organization (“WHO”) successfully segregates its US funding so that it does not go toward its Human Reproduction Program, which is the unit responsible for its abortion-related research. See WHO, *Voluntary contributions by fund and by donor for the financial period 2010–2011* (April 5, 2012), available at http://www.who.int/about/resources_planning/A65_29Add1-en.pdf. Médecins Sans Frontières does not accept US funding. See *supra* note 20 and accompanying text.

⁴⁴ The US Congress treats the United Nations Population Fund (“UNFPA”) differently than any other recipient of US foreign aid by imposing upon it not one, but two, abortion-related restrictions. Congress not only requires UNFPA to agree to the “no abortion” ban on US funds, but UNFPA cannot perform a single abortion, even with funds from other donors, or it will be defunded by the US entirely. See Consolidated Appropriations Act 2012, §7085(d)(2), P.L. 112-74 (Dec. 23, 2011).

⁴⁵ See WHO, *supra* note 43.

⁴⁶ Donor recipients who do not provide medical care are also included in this chart in order to present a fuller picture of humanitarian funding. All funding statistics are from 2012, except for the World Health Organization and Médecins Sans Frontières, for whom UK funding statistics were not available that year.

⁴⁷ See Financial Tracking Service, Donor Profile: United Kingdom in 2012: Funding per Appealing Agency, available at http://fts.unocha.org/reports/daily/ocha_Rdonor10_DC223_Y2012_1307011608.pdf.

⁴⁸ See *id.*

⁴⁹ See Financial Tracking Service, Donor Profile: United States in 2012: Funding per Appealing Agency, available at http://fts.unocha.org/reports/daily/ocha_Rdonor10_DC224_Y2012_1307011608.pdf.

⁵⁰ Note: while the US does not contribute to the Common Humanitarian Fund, the recipients of this pooled fund receive US humanitarian aid, allowing US abortions restrictions to indirectly impact this fund.

⁵¹ Note: while the US does not contribute to the Emergency Response Fund, the recipients of this pooled fund receive US humanitarian aid, allowing US abortions restrictions to indirectly impact this fund.

⁵² During the year 2011. Financial Tracking Service, Donor Profile: United Kingdom in 2011: Funding per Appealing Agency, available at http://fts.unocha.org/reports/daily/ocha_Rdonor10_DC223_Y2011_1307090204.pdf.

⁵³ See WHO, *supra* note 43, and accompanying text.

⁵⁴ During the year 2010. Financial Tracking Service, Donor Profile: United Kingdom in 2010: Funding per Appealing Agency, available at http://fts.unocha.org/reports/daily/ocha_Rdonor10_DC223_Y2010_1307090204.pdf.

⁵⁵ See *supra* note 20 and accompanying text.