Global Justice Center
Human Rights Through Rule of Law

Shifting Good Policy to Practice: Armed Conflict, Humanitarian Aid, and Reproductive Rights

Amidst new and renewed attacks on sexual and reproductive health and rights, it is more important than ever for humanitarian aid policies to explicitly include abortion services.

Lack of Services is Life-Threatening

Women's bodies have become part of the modern battlefield. This is true both literally and politically, where conflict-related sexual violence is as prevalent as ever,[1] as well as in the political battlefield, where reproductive freedom is increasingly under siege. **Today, women and girls facing pregnancies from war rape rarely receive abortion services.**[2]

The gap in services is the result of draconian funding restrictions, lack of clear donor guidance, and misunderstandings about the protections afforded under international law.[3]

When safe abortion services are unavailable, war rape survivors face life-threatening pregnancies which can lead to serious physical injury, risk of suicide, and the incapability of many young persons' bodies to safely carry a pregnancy to term.[4]

International Law Protects Abortion Services

As a legal matter, armed conflict is a specific type of humanitarian setting, governed by a specific area of law—international humanitarian law (IHL). IHL ensures victims of armed conflict receive the medical care they *need* by protecting them with *rights*. In cases of pregnancy, these rights require the option of abortion services.[5]

As a matter of practice, many humanitarian donors and actors use a "needs-based" model—administering medical care to meet patients' needs without regard to the legal framework.

In light of reinvigorated global assaults on reproductive health, it is essential that needs-based approaches are bolstered by the strong rights-based protections embedded in IHL. Humanitarian actors, advocates and donors must ensure that their work and policies are grounded in victims' rights so that victims' needs are comprehensively met.

IHL Rights Protecting Pregnant Persons in Armed Conflict

Right to all necessary medical care based solely on patient's condition and without adverse distinction based on sex

- As "wounded and sick" in armed conflict, pregnant women and girls must be provided "the medical care and attention required by their condition."[6]
- In all cases, medical treatment should be as favorable to women as that granted to men.[7] The right does not mean that medical treatment for each sex must be identical. Instead, medical outcomes for the sexes must be the same and can be achieved through differential treatment.[8]
- IHL does not spell out the types of treatments that should be given, but only requires that they be those based on the condition of the patient.[9]

In the case of pregnant persons in armed conflict, necessary medical care includes the provision of abortion services. For example, whereas the condition of a man raped by a stick requires surgery, the condition of a woman impregnated by a penis ***requires the option of abortion****.*

Right to be free from torture and other cruel, inhuman and degrading treatment

- IHL prohibits "cruel treatment and torture" and "outrages upon personal dignity, in particular, humiliating and degrading treatment."[10]
- "Torture" is defined as "severe physical or mental pain or suffering" on the basis of "discrimination of any kind."[11] The definition of torture is intentionally ambiguous so as to allow for the inclusion of new acts, treatments and interpretations.[12]

The denial of abortion services has been explicitly determined to cause serious mental and physical suffering constituting torture and other cruel, inhuman and degrading treatment in certain contexts.[13]

Concrete Actions to Save Lives

While the protection of abortion services under IHL has been increasingly recognized—including by the European Union, the UN Secretary-General, the UN Security Council, and the Inter-Agency Field Manual on Reproductive Health in Humanitarian Settings[14]—services are not comprehensively provided.

To ensure war rape survivors receive the medical care they need, national governments and international organizations should:

→ **Adopt a policy recognizing that persons impregnated by rape in armed conflict have absolute rights to non-discriminatory and comprehensive medical care under IHL, including the option of safe abortion services.**

- **Sample Policy:** "International humanitarian law governs situations of armed conflict and requires offering safe abortion services to guarantee the right to non-discriminatory medical care—failing to offer such services amounts to torture and inhuman treatment."

→ **Implement this policy that guarantee the right to abortion access in armed conflict by:**

- communicating the policy to all humanitarian aid partners;
- clearly informing partners of their obligations under IHL; and
- incorporating the policy into contracts, memoranda of understanding, and other agreements with humanitarian partners.

→ **Ensure humanitarian funds are segregated from those with restrictions on abortion care, including US humanitarian funds.**

→ **Continue to stand up forcefully for abortion care in armed conflict as a matter of right in international and regional fora.**

1. *See* UN Secretary-General, R*eport of the Secretary-General on Sexual Violence in Conflict*, U.N. Doc S/2019/280 (29 Mar. 2019).
2. *See* e.g. G. Burkhardt et al., *Sexual violence-related pregnancies in eastern DRC: a qualitative analysis of access to pregnancy termination services*, 20(10) Conflict & Health (2016).
3. *See* Burkhardt, *supra* note 2.
4. Dr. H. Liebling et al., Women and Girls Bearing Children through Rape in Goma, Eastern Congo: Stigma, Health and Justice Responses (2012); see Harv. School of Pub. Health & Physicians for Human Rights, The Use of Rape as a Weapon of War in the Conflict in Darfur, Sudan (2004), at 20.
5. Akila Radhakrishnan et al., Commentary, Protecting Safe Abortion in Humanitarian Settings: Overcoming Legal and Policy Barriers, Reproductive Health Matters, Nov. 2017.
6. Common Article 3 to the Geneva Conventions; Additional Protocol I to the Geneva Conventions, art. 10; Additional Protocol II to the Geneva Conventions, art. 7.
7. Geneva Convention III, art. 14; ICRC, *Customary International Law Database*, r. 110.
8. Common Article 3 to the Geneva Conventions; Additional Protocol I to the Geneva Conventions, art. 10; Additional Protocol II to the Geneva Conventions, art. 7.
9. Common Article 3 to the Geneva Conventions; Additional Protocol I to the Geneva Conventions, art. 10; Additional Protocol II to the Geneva Conventions, art. 7. See also Letter from Louise Doswald-Beck, Professor of International Law, to US President Obama, 10 Apr. 2013, https://bit.ly/2FkGUQK.
10. Common Article 3 to the Geneva Conventions.
11. Elements of Crimes for the ICC, *Definition of torture as a war crime* (ICC Statute, art. 8(2)(a)(ii) and (c)(i)).
12. Int'l Committee of the Red Cross, 1958 Commentaries to Geneva Convention IV, art. 3, at 38.
13. *See* Report of the Sp. Rapp. on torture, ¶ 46, U.N. Doc. A/HRC/22/53 (1 Feb. 2013); see also CAT Concluding Observations: Peru, ¶ 23; Committee against Torture, *Concluding Observations: Chile*, ¶ 7(m), U.N. Doc. CAT/C/CR/32/5 (14 June 2004); Human Rights Committee, *General Comment No. 28*, ¶ 11, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000).
14. UK DfID, Safe & Unsafe Abortion, (2014), p. 9; United Nations Security Council, U.N. Doc. S/PV.7160 (25 Apr. 2014), at 15 (statement by France's Mr. Araud); UNSC, U.N. Doc. S/PV.6984 (24 June 2013), at 48 (statement by Neth.); EU Commission, *Letter from F. Mogherini and C. Stylianides in response to request of 39 MEPs for Commission to evaluate policy on abortions for victims of war rape*, 11 Sept. 2015; R. Coomaraswamy, *Preventing Conflict, Transforming Justice, Securing the Peace – A Global Study of the Implementation of UNSCR 1325*, (2015), p.77; Inter-Agency Working Group on Reproductive Health in Crises, Minimum Initial Service Package 60, 161 (2011); Sphere Association, The Sphere Handbook: Humanitarian Charter and Minimum Standards in Humanitarian Responses 327, 331-332 (4th ed. 2018).