



A Call for European Union Member States to Ensure Access to Safe Abortion Services for Female Rape Survivors in Armed Conflict

“In peacetime, but even more so during war, access to sexual and reproductive health services is indispensable. We know that women and girls exposed to sexual violence run the risk of premature and unwanted pregnancies. The risk of maternal mortality in such circumstances rises tenfold. The refusal to provide abortion services represents a violation of one of the principles of international humanitarian law...”

-Ambassador of France to the UN Gérard Araud, at Security Council Open Debate on conflict-related sexual violence (April 2014)

This Call to Action urges European Union Member States (Member States) to change the European Union’s (EU) humanitarian aid policies. As they stand now, the EU’s policies prevent the provision of comprehensive and non-discriminatory medical care to girls and women impregnated by rape in armed conflict by routinely denying access to safe abortion services. These policies increase the harm suffered by women and girls impregnated by war rape and violate their rights under common Article 3 of the Geneva Conventions.

The EU should establish a strong policy affirming the Geneva Conventions’ requirement that war victims be provided all care necessary as required by their condition, including life-saving abortion services for victims of war rape.

Member States and the European Commission together form the world’s largest donor of development and humanitarian aid.¹ As such, the EU is uniquely situated to take leadership to ensure that victims of war rape are provided the rights and care they are entitled to under the Geneva Conventions. Further, such a change to EU policy would save women’s lives and help create normative change in favor of full and effective enforcement of international humanitarian law (“IHL”).

I. The Rights of Girls and Women to Non-Discriminatory Medical Care under International Humanitarian Law

The Geneva Conventions, their Additional Protocols, and customary international law require that all persons “wounded and sick” in armed conflict receive the medical care and attention required by their condition and forbid any distinction founded on any grounds other than medical ones.² The Conventions also require that “[w]omen shall be treated with all the regard due to their sex and shall in all cases benefit by [medical] treatment as favourable as that granted to men.”³ Furthermore, common Article 1 of the Geneva Conventions and customary international law require states to “respect” and “ensure respect” for IHL⁴, including in the provision and distribution of humanitarian aid.



“Distinctions on the basis of sex are...prohibited only to the extent that they are unfavorable or adverse, favorable distinctions are permissible and indeed required, to ensure the best possible treatment for each person...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.”

Professor Louise Doswald-Beck, former head of the legal division of the International Committee of the Red Cross (“ICRC”), in an open letter to President Barack Obama criticizing the absolute abortion ban by the United States on its humanitarian aid (10 April 2013)

The need to ensure safe abortion services for female rape survivors was recognized by the United Nations Security Council in its Resolution 2122.⁵ The Resolution calls on all United Nations Member States and UN entities to “ensure humanitarian aid and funding includes provision for the full range of medical, legal, psychosocial and livelihood services to women affected by armed conflict and post-conflict situations, and noting the need for access to the full range of sexual and reproductive health services, including regarding pregnancies resulting from rape, without discrimination.”⁶

The mandate of these rules is clear: non-discriminatory health care, including safe abortion services must be provided to women and girls raped in war. Put simply, the denial of abortions to women and girls raped in war violates their rights under IHL and Security Council Resolution 2122.

In order for the EU and Member States to fulfill their IHL obligations and meet the requirements of Resolution 2122, the EU’s policy must be changed in three ways. First, Member States must set forth a clear EU policy on abortion and the Geneva Conventions. Second, Member States must require the European Commission to differentiate those EU aid beneficiaries whose care is governed by IHL. Third, in order to avoid the United States’ (US) abortion ban on its humanitarian aid, the European Commission must ensure that EU partners segregate EU aid from US aid.

I. Member States must set forth a clear EU policy on abortion and the Geneva Conventions

EU humanitarian aid is distributed by the European Commission and its ancillary body, European Community Humanitarian Office (ECHO).⁷ ECHO’s policy on abortion and the Geneva Conventions is that the Conventions’ medical mandates do not apply to the provision of abortion services to women impregnated by war rape since “[n]either international humanitarian law nor international human rights law explicitly refer to abortion rights and therefore the legal primacy of international frameworks on this issue is not clear.”⁸ The policy also states that “[e]ven if international humanitarian law were to give unequivocal

rights in this field (which does not currently appear to be the case), in many countries this law is only enforceable if integrated into domestic law.”⁹

Thus, the Commission’s policy is that, in the absence of domestic implementation of the right to abortion under IHL, the contours of a state’s national abortion law constitutes the appropriate standard of care for war rape victims. This stands in stark contrast with the basic principle of IHL that in times of armed conflict, the Geneva Conventions and norms of customary international humanitarian law take precedence over national laws. Thus, in situations of armed conflict, a local law cannot be relied upon as a justification for the failure to comply with the mandates of IHL.¹⁰

Accordingly, it’s imperative that Member States take steps to ensure that the provision of EU humanitarian aid is governed by IHL and that the rights of war rape survivors to comprehensive and non-discriminatory medical care trump any contrary national laws, including restrictive abortion laws. Such steps should also affirm the protected status of doctors and medical workers treating war victims under IHL who are accorded absolute immunity from prosecution for breaches of national laws, including laws that imposing criminal penalties on doctors for the performance of abortion services.¹¹

2. Member States must require the European Commission to differentiate those EU aid beneficiaries whose care is governed by IHL

Member States should require the European Commission to implement the EU guidelines on promoting compliance with IHL, which makes clear that “[i]n order to enable effective action,” EU bodies must identify “situations where IHL may apply . . . without delay.”¹² The guidelines further require EU bodies to “recommend action to promote compliance with IHL in accordance with these Guidelines.”¹³

ECHO argues that such differentiation does not apply to its humanitarian aid recipients because of ECHO’s role as a “needs-based and non-discriminatory donor”, supporting “the provision of the same type of care to rape victims in armed conflict as to any other victims of rape in any other emergency context.”¹⁴

While this “one policy fits all” may be appropriate for many humanitarian situations, armed conflicts are unique subset of emergencies which trigger the protections and mandates of the Geneva Conventions. In other words, in armed conflicts is there a separate legal regime which applies and governs the conduct of actors, including humanitarian aid donors. In fact, the very purpose of the Geneva Conventions was to establish binding universal rules covering all war victims regardless of geographic location, and thereby to ensure equal treatment for girls and women raped in war.

Further, ECHO’s non-differentiation policy violates the European Council Regulation requiring it to ensure that its humanitarian aid for “victims of fighting” is delivered in accord with international humanitarian law.¹⁵ Similarly, the Lisbon Treaty calls for the EU’s

“[h]umanitarian aid operations...[to]...be conducted in compliance with the principles of international law and with the principles of impartiality, neutrality and non-discrimination.”¹⁶

Consequently, ECHO’s current policy is contrary to the EUs guidelines and laws, all of which support and require the need to differentiate between situations in which IHL applies, and situations where it does not.

3. Member States must ensure that European Commission partners, where necessary, segregate EU funds from US funds, which contain an abortion ban

Changing EU policy on abortion and the Geneva Conventions would only go a part of the way to help girls and women in conflict. In order to ensure victims of war rape are giving their full protections under IHL, Member States must also require that EU humanitarian aid funds are segregated from those provided by the US. Segregation is necessary because, in violation of the Geneva Conventions, the US places restrictions on its humanitarian aid which bar the provision of abortion services for women and girls impregnated via war rape. Thus, because the EU and US provide humanitarian aid to largely the same entities and conflict situations, if the recipients of EU humanitarian aid do not separate the funds from the US’s, the US policy will override the EU’s and *none* of the total combined sum may be used to fund abortions for rape victims.¹⁷ Recognizing this problem, the European Parliament has twice called for Member States to do exactly this: segregate their humanitarian aid from that provided by the US so long as US restrictions stay in place.¹⁸

Consequently, Member States should also require EU humanitarian aid partners to segregate EU aid from US aid, such that the EU can guarantee its funding is in full compliance with the Geneva Conventions, and can be used to provide safe abortion services to girls and women raped in war.

Syria: An example of how EU humanitarian aid compromised by the United States

In Syria, government and government-related militia forces are using rape as a tactic of war and both the US and ECHO are providing significant amounts of humanitarian aid to, in large part, the same entities.¹⁹ These entities and their local partners do not segregate their US and EU aid and, as a result, even where abortion is legal for Syrian girls and women impregnated by war rape,²⁰ EU humanitarian aid partners are not providing safe and medically necessary abortions.

4. Conclusion

The time has come for the EU to treat victims of war rape equally and respect the rights afforded to them by the Geneva Conventions, their Additional Protocols, and customary international law. Member States and the European Commission should, in order to ensure that women and girls raped in war have access to all necessary medical care, including safe abortion services: (I) set forth a clear EU policy on abortions and the Geneva Conventions;

(2) require the EU Commission to differentiate those aid beneficiaries whose care is governed by IHL; (3) ensure that EU Commission partners, where necessary, segregate EU funds from US humanitarian funds containing a ban on abortions.

“In peacetime, but even more so during war, access to sexual and reproductive health services is indispensable. We know that women and girls exposed to sexual violence run the risk of premature and unwanted pregnancies. The risk of maternal mortality in such circumstances rises tenfold. The refusal to provide abortion services represents a violation of one of the principles of international humanitarian law, which covers non-discrimination with respect to the provision of medical services to victims. Such discrimination, which adds a terrible injustice to women who have been the victims of sexual violence, must be brought to an end.”

Ambassador of France to the United Nations Gérard Araud at the Security Council Open Debate on conflict-related sexual violence (April 24 2014)

¹ ABOUT ECHO, Commission’s European Humanitarian Office (ECHO), http://ec.europa.eu/echo/about/presentation_en.htm, “The European Union as a whole is the world’s biggest donors of humanitarian aid. Together, Member States and European Institutions contribute more than half of official global humanitarian aid.”

² 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 UNTS 3, Art. 10, “In all circumstances they [the wounded and sick] shall be treated humanely and shall receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. There shall be no distinction among them founded on any grounds other than medical ones”; Additional Protocol (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 UNTS 609, Art. 7. See also ICRC Customary IHL Study, Rule 26 (which also applies to non-international conflicts) (medical personnel must be allowed to give the best possible care in accordance with medical ethics (this rule is codified in API, Art. 16)).

³ Geneva Convention (III) Relative to the Treatment of Prisoners of War, (1950) 75 UNTS 135, Art 14. (“Women shall be treated with all the regard due to their sex and shall in all cases benefit by treatment as favourable as that granted to men.”).

⁴ Common Article 1 to all four Geneva Conventions of 12 August 1949.

⁵ Resolution 2122 was cosponsored by 24 Member States of the European Union.

⁶ United Nation Security Council Resolution 2122, UN Doc S/RES/2122 (2013) available at: <http://unscr.com/en/resolutions/doc/2122>.

⁷ ABOUT ECHO, Commission’s European Humanitarian Office, http://ec.europa.eu/echo/about/presentation_en.htm; See also European Union – Frequently Asked Questions, http://europa.eu/rapid/press-release_MEMO-07-238_en.htm?locale=en.

⁸ In a 2012 letter to the Global Justice Center outlining ECHO policy, the director-general of DG ECHO stated the following: “Neither international humanitarian law nor international human rights law explicitly refer to abortion rights and therefore the legal primacy of international frameworks on this issue is not clear. Even if international humanitarian law were to give unequivocal rights in this field (which does not currently appear to be the case), in many countries this law is only enforceable if integrated into domestic law. Generally speaking, our humanitarian partners advise their staff operating in country to abide by the laws of the land. Violating domestic law would carry the risk of prosecution which would put humanitarian aid at risk.” Letter from Claus Sørensen, Director-General DG ECHO, to Global Justice Center (20 Dec. 2012), on file with Global Justice Center.

⁹ *Id.*

¹⁰ ICRC, Professional Standards for Protection Work: Carried Out by Humanitarian and Human Rights Actors in Armed Conflict and Other Situations of Violence at 41 (Oct. 2009) (“pending such changes [to bring national law into conformity with international law] protection actors should nevertheless be prepared to point out that domestic law cannot be used as an excuse for non-compliance with international obligations”).

¹¹ Protocol I, Art. 16(1) (“Under no circumstances shall any person be punished for carrying out medical activities compatible with medical ethics, regardless of the person benefiting therefrom.”); Protocol II, Art. 10(1) (“Under no circumstances shall any person be punished for having carried out medical activities compatible with medical ethics, regardless of the person benefiting therefrom.”); ICRC, Customary International Humanitarian Law Database, *Rule 26. Medical Activities*, available at http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule26 (“Punishing a person for performing medical duties compatible with medical ethics or compelling a person engaged in medical activities to perform acts contrary to medical ethics is prohibited.”).

¹² Updated European Union guidelines on promoting compliance with IHL (2009/C 303/06), Section II, ¶ 159(a).

¹³ Updated European Union guidelines on promoting compliance with IHL (2009/C 303/06), Section II, ¶ 159(a).

¹⁴ “As a needs-based and non-discriminatory donor, the European Commission’s Directorate-General for Humanitarian Aid and Civil Protection supports the provision of the same type of care to victims of rape in armed conflict as to any other victims of rape in any other emergency context.” Letter from Claus Sørensen, Director-General DG ECHO, to Global Justice Center (20 Dec. 2012).

¹⁵ Council Regulation (EC) No 1257/96 of 20 June 1996 concerning humanitarian aid “Whereas civilian operations to protect the victims of fighting or of comparable exceptional circumstances are governed by international humanitarian law and should accordingly be considered part of humanitarian action;” available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1996:163:0001:0006:EN:PDF>.

¹⁶ The Treaty of Lisbon amending the Treaty Establishing the European Union and the Treaty Establishing the European Community, including the Protocols and Annexes, and Final Act with Declarations art. 188(J)(2), 13 Dec. 2007, 2007 O.J. (C 306) 1; *accord* Consolidated Version of the Treaty on the Functioning of the European Union art. 214, Sep. 5, 2008, 2008 O.J. (C 115) 47.

¹⁷ Currently one of the largest EU grantees for providing services to war victims is the International Committee of the Red Cross (“ICRC”) which does not segregate its US funds from its EU funds. Similarly, the United Nations Population Fund (“UNFPA”) fails to segregate US humanitarian aid from EU aid. The World Health Organization (“WHO”) is the only United Nations entity that segregates out US funding from EU and other donors in order to preserve the integrity and independence of its abortion related research. The WHO segregates its US funding so 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.

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 . . .”); 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>.

¹⁹ Financial Tracking Service, *List of all humanitarian pledges, commitments & contributions in 2013*, http://fts.unocha.org/reports/daily/ocha_R10_EI6303_asof_1406061703.pdf.

²⁰ In Syria and Egypt abortion is legal to save a woman’s life. In Jordan abortion is legal to save a woman’s life and to preserve a woman’s physical and mental health. In Turkey, it is legal to save a woman’s life, to preserve a woman’s physical and mental health, in case of rape or incest, or in case of fetal impairment, for social and economic reasons and upon request. See United Nations Department of Economic and Social Affairs, Population Division, *World Abortion Policies 2013*, available at http://www.un.org/en/development/desa/population/publications/pdf/policy/WorldAbortionPolicies2013/WorldAbortionPolicies2013_WallChart.pdf.