Global Justice Center
Human Rights Through Rule of Law

# MAKING IHL WORK FOR WOMEN AND GIRLS

The World Humanitarian Summit (WHS) has admirably taken on the task of rethinking and retooling humanitarian action to meet the challenges facing the world today. In modern conflicts, the increased targeting of civilians, including the strategic use of sexual violence as a tactic of war, means that humanitarian action must be tailored to respond to victims' distinct needs. In other words, **because humanitarian needs in conflict are specific, we need specific and relevant ways to respond to them.**

Importantly, this response must be grounded in the rights of war victims under International Humanitarian Law ("IHL" or the laws of war). This includes comprehensive and non-discriminatory medical care, psychosocial, legal, and livelihood support, and other multi-sectoral services for survivors of sexual violence.

**"Because humanitarian needs in conflict are specific, we need specific and relevant ways to respond to them."**

However, while the nature and face of modern conflict has changed, the laws of war have remained mired in the antiquated models of warfare they were derived from; men fighting men on defined battlefields. **In the context of modern humanitarian action, where civilians constitute over 90% of those affected by war and where women and girls are often specifically targeted, this has meant that women and girls are left behind.**

Accordingly, on the occasion of the WHS, states, international organizations, service providers, NGOs, and other actors must: (1) **recognize** conflict's differentiated impact on women and girls; (2) **implement** IHL's protections and rights for women and girls; and (3) **overhaul** humanitarian action to include IHL's mandates.

## CONFLICT HAS A DIFFERENTIATED IMPACT ON WOMEN AND GIRLS

Modern conflict has seen a horrifying spike in the intentional targeting of women and girls—including the use of sexual violence as a tactic of war. Rape and other forms of sexual violence in war often have distinct characteristics rarely, if ever, seen outside of conflict.

For instance, the ongoing Syrian civil war has seen more than 50,000 rapes. Women there describe being drugged, blindfolded, and raped in groups. Nigeria's Boko Haram openly targets young girls for kidnappings, forced marriage, rape, sexual slavery and other forms of gender-based violence. In Iraq, Daesh terrorists have systematically abducted girls and women, held them in captivity, and repeatedly subjected them to rape and sexual slavery—including as a tool of genocide. The UN Secretary General recently found that Daesh has "raped women pursuant to a plan of self-perpetuation aimed at transmitting their ideology to a new generation who can be raised in their own image" and that in this context, **"women's bodies are used as "biological weapons" to alter the demography of a region and to unravel existing kinship ties."**[1]

Today, fear of sexual and gender-based violence is a driver of displacement and, in some cases, the ability to commit such violence is a recruitment tool. This increased targeting of women and girls is often grounded in patriarchal attitudes towards women, considering them to be the "repositories of cultural identity" and the "bearers of future generations who will populate disputed territories."[2]

This abhorrent shift in the nature of conflict demands that humanitarian action be adjusted to meet victims' distinct needs and protect their rights. This requires that the planning and implementation of humanitarian responses takes

into account the gender-specific consequences of such acts and utilizes a true gender perspective. For example, while both men and women experience sexual violence in conflict settings, the physical consequences for both genders are different—necessitating different medical care.

One significant consequence of sexual violence faced only by women and girls is the risk of unwanted pregnancy and the consequent need to ensure access to measures to respond to unwanted pregnancy, including emergency contraception and safe abortion services. In humanitarian settings, where women and girls are rarely able to access care within the 72-125 hour time period in which emergency contraception is effective, the importance of the availability of safe abortion services cannot be underestimated.

**For victims who become pregnant from rape, the denial of an abortion has devastating consequences resulting in increased physical, psychological, and social trauma.**

The physical pain and suffering resulting from the denial of an abortion and the resulting forced pregnancy can be so serious as to threaten the long-term health and lives of victims. Unwanted pregnancies from rape and the conditions imposed by war—namely, malnutrition, anemia, malaria, exposure, stress, infection, and disease—increase the risk of maternal mortality.[3] As the UN Secretary General recently reported: "Social pressures combined with a lack of reproductive health care make unsafe abortion a leading cause of maternal mortality in many displacement settings, from the Central African Republic to South Sudan."[4]

Further, forcing rape victims to carry unwanted pregnancies to term perpetuates their sense of a loss of control and compounds mental and emotional trauma.[5] Pregnancy and being forced to bear the child of the rapist "prolongs the perpetrator's intrusion often causing great anguish and shame to the victim."[6]

The reality of the need to ensure that safe abortion services are available for rape victims in humanitarian aid has been recognized by the UN Security Council[7] and Secretary General.[8] Similarly, the Global Study on the implementation of Security Council Resolution 1325 noted that access to safe abortion is particularly important in conflict settings, where pregnancy is considerably more dangerous,[9] and called on the UN and its Member States as well as other humanitarian donors and actors to ensure access to such services.

**"Ensuring that women receive the respect and protection, as well as humane treatment and the care required by their specific needs, is an essential feature of the Geneva Conventions. In armed conflicts today, the relevance and importance of [these protections] has never been greater."**

*** ICRC's 2016 Commentaries to Geneva Convention I, Art. 12, ¶ 117.**

While access to abortion services for female rape victims is by no means the only gender-specific need in humanitarian settings, it is often ignored or intentionally omitted from available services—demonstrating how the application of a true gender perspective can help identify specific needs which must be including and addressed in humanitarian action.

## PROTECTIONS FOR WOMEN AND GIRLS UNDER IHL

Not only are abortion services *needed* by girls and women impregnated by war rape, the option of having an abortion for these victims is *required* under IHL. During times of conflict, IHL, which guarantees specific and non-derogable rights and protections to those affected by conflict, must guide humanitarian action. This includes the provision of health care to victims of war rape—considered "wounded and sick" in armed conflict.[10]

IHL contains broader and more specialized protections than those that apply in other emergency settings. Specifically, IHL requires that the wounded and sick be provided "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."[11] This rule is read to mean that outcomes for each gender must be the same and that women are entitled to medical treatment as favorable as that granted to men.[12] IHL also establishes that the wounded and sick have an absolute right to be "treated humanely" and must never be subjected to "cruel treatment or torture."[13] In fact, humane treatment is the fundamental principle underlying all of IHL, and requires sensitivity to the different needs among men and women due to social, economic, cultural and political structures.[14] These rights and protections must be realized without adverse distinction, which is understood to require differentiated treatment adapted to a person's specific needs, including

based on "a person's state of health, age or sex."[15]

For example, rape can be perpetrated in different ways and with different consequences; the injuries suffered necessitate different medical care. Women and men raped with objects may need anti-biotics and surgery, while a woman raped by a male sexual organ may in addition need emergency contraception, HIV prophylaxis and, if she becomes pregnant, the option of abortion. Humanitarian action needs to take these different consequences and needs into account.

In short, IHL **requires the provision of abortion services for victims of war rape** in order to ensure that victims' rights to human treatment, all necessary medical care and to be free from cruel treatment or torture without adverse distinction are realized. That abortion is a service protected by IHL has increasingly been recognized by international actors, including the UK, France, the Netherlands, the European Union, the Security Council, and the UN Secretary-General.[16]

To secure these rights, IHL provides specific professional standards covering the treatment of the wounded and sick.[17] These standards are designed to reaffirm the status of the wounded and sick as the primary beneficiaries of IHL's rights and obligations, and to protect doctors administering medical care in line with IHL's mandates.[18]

**It is important to note that protections and obligations under IHL supersede conflicting domestic laws.**[19] Indeed, domestic laws are only to be used when they reinforce the protections of international law and cannot be used as an excuse for non-compliance with international obligations.[20] Accordingly, in conflict settings, safe abortion services are to be provided in line with the rights and protections of IHL, not domestic laws.

## IHL MUST GOVERN HUMANITARIAN ACTION

Due to funding restrictions and antiquated policies, thousands of girls and women raped and impregnated in armed conflict are routinely denied abortions with devastating consequences. While this pattern is beginning to shift and more and more governments are recognizing the right to abortions as part of IHL's guarantee of non-discriminatory medical care,[21] **more must be done.**

Modern humanitarian action must acknowledge the particular needs and rights of victims of armed conflict under IHL. It must respond to the changing nature of modern conflict and its specific targeting of civilians, especially women and girls, and the use of sexual violence. In conflict settings, it must find its foundation in IHL's protections of the wounded and sick.

In doing so, **humanitarian action must guarantee access to abortion services as part of IHL's right to all necessary medical care without adverse distinction on the basis of sex.** It must protect medical personnel, guaranteeing that their sole focus can be on the well-being and health of their patients.

In the end, states and international actors, including multi-lateral agencies, must fulfil their international obligations to respect and ensure respect for IHL by administering non-discriminatory humanitarian aid that meets the gender specific needs of women and girls, especially those raped and impregnated in conflict.

## CONCLUSION AND RECOMMENDATIONS

In keeping in line with the efforts of the WHS to meet the needs of victims of conflict, states, international organizations, service providers, NGOs, and other actors should at minimum comply with the recommendations below.

Anything short of these basic but crucial fixes to global humanitarian action would continue history's tragic pattern of leaving behind girls and women as the rest of humanitarian action moves forward. Victims of war rape deserve no less than the absolute protections guaranteed to them under IHL.

- Support victims of war rape and other forms of SGBV by adopting and implementing comprehensive humanitarian aid programs that affirm war rape victims' absolute rights to all necessary medical care, including access to abortion services.
- Ensure that humanitarian facilities comply with the medical care mandates of IHL.
- Commit to upholding IHL protections for doctors and medical workers treating war victims in line with medical ethics including their immunity from prosecution.
- Make explicit in situations of armed conflict that IHL is the governing legal regime and that it supersedes national laws with lower standards and protections, including national abortion laws.

» Affirm that victims in armed conflict are afforded special international legal protections in humanitarian action in contrast to other humanitarian emergencies, such as natural disasters.

» Highlight the changing nature of modern conflict and its specific targeting of civilians, especially women and girls, and the chronically underreported use of sexual and gender based violence.

» Include women in the design, monitoring and implementation of humanitarian action and must pay special attention to the gender-based repercussions of conflicts.

## ENDNOTES

1. UN Secretary-General, *Report of the Secretary-General on conflict-related sexual violence,* ¶ 14, *delivered to the Security Council*, U.N. Doc. S/2016/361 (20 Apr. 2016).

2. UN Secretary-General, *Report of the Secretary-General on conflict-related sexual violence*, ¶ 21, *delivered to the Security Council*, U.N. Doc. S/2016/361 (20 Apr. 2016).

3. *See* Harvard School of Public Health & Physicians for Human Rights, *The Use of Rape as a Weapon of War in the Conflict in Darfur, Sudan*, Oct. 20, 2004, at 20; *see also* Medecins Sans Frontieres, "*I Have No Joy, No Peace of Mind": Medical Psychological, and Socio-Economic Consequences of Sexual Violence in Eastern DRC*, 2004, at 11.

4. UN Secretary-General, *Report of the Secretary-General on conflict-related sexual violence,* ¶ 16, *delivered to the Security Council*, U.N. Doc. S/2016/361 (20 Apr. 2016).

5. *See* Amnesty International, *The Total Ban in Nicaragua: Women's Lives and Health Endangered, Medical Professional Criminalized*, 2009, at 23.

6. Jill Trenholm, *Women Survivors, Lost Children and Traumatized Masculinities: The Phenomena of Rape and War in Eastern Democratic Republic of Congo*, Digital Comprehensive Summaries of Uppsala Dissertations from the Faculty of Medicine, 920, 2013, at 43, 49.

7. S.C. Res. 2106, ¶19, U.N. Doc S/RES/2106 (June 24, 2013); S.C Res 2122, PP 8, U.N. Doc S/RES/2122 (Oct. 18, 2013).

8. UN Secretary-General, *Report of the Secretary-General on women peace and security*, ¶ 72(a), *delivered to the Security Council*, U.N. Doc. S/2013/525 (4 Sept. 2013).

9. Radhika Coomaraswamy, *Preventing Conflict, Transforming Justice, Securing the Peace – A Global Study on the Implementation of United Nations Security Council resolution* 1325, pp. 77-78 (UN Women, 2015).

10. ICRC, 2016 Commentaries to Geneva Convention I, Art. 3, ¶ 392; Protocol Additional (II) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Armed Conflicts, art. 8(a), Jun. 8, 1977, 1125 U.N.T.S. 302.

11. ICRC, 2016 Commentaries to Geneva Convention I, Art. 3, ¶ 414; Protocol I art. 10 and Protocol II art. 7 (relating to non-discriminatory medical care).

12. Geneva Convention (III) Relative to the Treatment of Prisoners of War, (1950) 75 UNTS 135, art. 14; Commentaries to GC IV art. 13, ¶ 2.

13. Geneva Conventions, common Article 3; Common Article 3; ICRC, 2016 Commentaries to Geneva Convention I, Art. 3, ¶¶ 262-273.

14. ICRC, 2016 Commentaries to Geneva Convention I, Art. 3, ¶ 203.

15. ICRC, 2016 Commentaries to Geneva Convention I, Art. 3, ¶ 226-227.

16. Department for International Development, Safe and Unsafe Abortion - the UK's policy on safe and unsafe abortion in developing countries (a DfID Strategic Document), June 2014, at p. 9; *See* Written parliamentary answers from Frans Timmermans, Minister of Foreign Affairs, and Liliaane Ploumen, Minister of Foreign Trade and Development Aid, in answer to questions from Parliament Member Sjoerd Sjoerdsma regarding safe abortion for raped women in war zones (Mar. 8, 2013); Security Council, 6984th meeting, U.N. Doc. S/PV.6984 (June 24, 2013), at 48 (statement by Netherlands); Security Council, 7160th meeting, U.N. Doc. S/PV.7160 (Apr. 25, 2014), at 15 (statement by France); European Commission, *Letter from Federica Mogherini (EU High Representative of the Union for Foreign Affairs and Security Policy) and Christos Stylianides (Commissioner for Humanitarian Aid and Crisis Management) in response to request of 39 MEPs for Commission to evaluate its policy on abortions for victims of war rape*, Sept. 11, 2015.

17. *See* Protocol II, art. 10; Protocol I, art. 16; ICRC, Commentary to Protocol I, art. 16, ¶ 665; ICRC, Customary IHL Database, Rule 26 (medical activities).

18. World Medical Association, *WMA Regulations in Times of Armed Conflict*, 2006; Commentary to Protocol I, art. 16, ¶ 650.

19. Henckaerts, Jean-Marie and Doswald-Beck, Louise, Customary International Humanitarian Law, Volume I: Rules (ICRC/Cambridge University Press) Rule 110 (2005); Common Article 7 to the Geneva Conventions; 2016 Commentaries to Geneva Convention I, Art. 7, ¶¶ 14, 15 Common Article 2 to the Geneva Conventions (IHL is the *lex specialis* governing armed conflict, meaning that its provisions concerning the wounded and sick in armed conflict override general provisions of other legal regimes, national and local).

20. Vienna Convention on the Law of Treaties, art. 27, May 23, 1969, 1155 U.N.T.S. 331; Draft Articles on Responsibility of States for Internationally Wrongful Acts, (International Law Commission, 53rd Session, 2001), commentary to art. 3, ¶ 1.

21. *See supra* note 16.