

**SUBMISSION FROM THE GLOBAL JUSTICE CENTER: SERVING THE NEEDS OF PEOPLE IN  
CONFLICT BY GUARANTEEING THE RIGHTS SPECIFIC TO CONFLICT**

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As the World Humanitarian Summit's (WHS) scoping paper on Serving the Needs of People in Conflict ("Scoping Paper") identifies, "because humanitarian needs in conflicts are specific, we need specific and relevant ways to respond to them." In modern conflicts, the increasing targeting of civilians, including the strategic use of sexual violence as a tactic of war, necessities that humanitarian action be tailored to respond to their specific needs. This includes comprehensive and non-discriminatory health services (including sexual and reproductive health), psychosocial, legal, and livelihood support, and other multi-sectoral services for survivors.

Importantly, the specific needs of these victims of war need to be met in accord with their rights under international humanitarian law. As the Scoping Paper points out, "conflicts are regulated by a specific body of international law, namely, international humanitarian law (IHL)." Under IHL, victims of armed conflict are provided legal protections not available to victims in other emergency settings,<sup>1</sup> which humanitarian action must reinforce and respect.

This submission focuses on the three pillars of action identified in the Scoping Paper: (1) Principles and Professional Standards that Must Guide Humanitarian Action in Conflict; (2) The Particular Needs of People Affected by Conflicts; and (3) How Humanitarian Action Should Look to Better Meet the Needs of People.

- **Principles and Professional Standards that Must Guide Humanitarian Action in Conflict**

During times of conflict, IHL, in addition to the generally applicable humanitarian principles of humanity, independence, impartiality and neutrality, must guide humanitarian action. This is particularly important in the provision of health care to those affected by conflict. As the ICRC notes in its fact sheet on *Respecting and Protecting Health Care in Armed Conflicts and in Situations Not Covered by International Humanitarian Law*, "in times of armed conflict, international humanitarian law provides rules to protect access to health care."

In this context, IHL provides specific rules protecting the "wounded and sick" in armed conflict. First and foremost, 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

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<sup>1</sup> In fact, the lack of specific protections for victims of natural disasters, in contrast to those that are provided to victims of armed conflict under IHL, is the impetus behind the International Law Commission's work on the protection of persons in the event of natural disasters.

medical ones.” The prohibition on adverse distinction, including based on sex, is read to mean that outcomes for each gender must be the same, not that the treatment must be identical, and that women are entitled to medical treatment as favorable as that granted to men. Furthermore, the wounded and sick have an absolute right to be “treated humanely, without any adverse distinction founded on . . . sex” and must never be subjected to “cruel treatment and torture.”

In addition to the rights of the wounded and sick to non-discriminatory medical care, IHL also provides specific professional standards covering the treatment of the wounded and sick in armed conflict. These protections are designed to reaffirm the status of the wounded and sick in armed conflict as the primary beneficiaries of IHL’s medical care mandates, as well as to save the lives and alleviate the suffering of those affected by conflict. Specifically, under IHL, medical personnel treating war victims may not be compelled to perform acts or refrain from the care required by a patient’s condition. IHL also specifically grants immunity from national prosecution for doctors and other medical personnel treating victims of armed conflict in compliance with medical ethics. In this context, medical ethics requires that doctors treat patients solely based on medical considerations and the patient’s wishes. The World Medical Association’s (WMA) *Regulation in Times of Armed Conflict* sets out that where doctors have conflicting loyalties, their primary obligation must be to patients and that “in all their professional activities, physicians should adhere to international conventions on human rights, international humanitarian law and WMA declarations on medical ethics.”

Finally, it is important to note that protections and obligations under IHL supersede conflicting domestic laws. In fact, 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. As the ICRC identifies in their *Professional standards for protection work carried out by humanitarian and human rights actors in armed conflict and situations of violence*, “when relevant regional and domestic law reinforce overall protection, and are in conformity with international law, protection actors should include them in their work.” The guidelines also elaborate on this principle and envision a role for humanitarian actors to take steps to ensure compliance with IHL. Specifically, the Professional standards provide that where domestic laws are “partially or even totally in contradiction with international law, such as treaties ratified by the State, or customary international law, or with internationally recognized standards,” protection actors should advise on changes to domestic laws that fall short of international law and standards.”

- **The Particular Needs of People Affected by Conflicts**

Rape and other forms of sexual violence in war often have distinct characteristics rarely, if ever, seen outside of conflict. As the Scoping Paper notes “even issues that are common also in other types of emergencies, such as sexual and gender-based violence and forced displacement, have specific dynamics during conflicts that must be considered.”

For instance, the ongoing Syrian civil war has seen an estimated 50,000 rapes. Women there describe being drugged, blindfolded, and raped in groups. In Iraq, Islamic State (IS)

terrorists have systematically abducted girls and women, held them in captivity and repeatedly subjected them sexual violence, including rape and sexual slavery. In Darfur, Sudan, where sexual violence has been used as a tactic of war for over 12 years, a recent attack in Tabit included the mass rape of over 200 women and girls in the span of three days. Finally, in Nigeria, Boko Haram openly targets young girls for kidnappings, forced marriage, rape, sexual slavery and other forms of gender-based violence.

Accordingly, humanitarian action to support these victims must respond to their specific needs, in accordance with their rights under IHL. This has been recognized by the UN Secretary General who has called for “legal, medical and psychosocial services for survivors of sexual and gender-based violence in conflict... [to] be provided in a gender-responsive and non-discriminatory manner and in accordance with international humanitarian law” (S/2014/693).

One significant consequence of rape that must be systematically addressed in humanitarian action is the risk of unwanted pregnancy and the need to ensure access to safe abortion services for these victims. For those victims who become pregnant from rape, the refusal of an abortion not only causes re-traumatization, but also severe suffering amounting to torture and cruel, inhuman and degrading treatment. The denial of abortions to raped women and girls has devastating consequences resulting in increased maternal mortality, and compounds the physical, psychological, and social consequences of rape.

Furthermore, the physical pain and suffering resulting from the denial of abortion can be so severe as to threaten the lives of impregnated war rape victims. More specifically, unwanted pregnancies from rape and the conditions imposed by war—namely malnutrition, anemia, malaria, exposure, stress, infection, disease—increase the risk of maternal mortality. For many women, abortion is not only the preferable option but also the safer option as compared to an unwanted and dangerous pregnancy. Even outside of conflict, where women and girls face increased maternal mortality due to many factors, childbirth is 14 times more likely to lead to death than a safe abortion. Rape in conflict, especially when committed against children or by gang rape, causes many physical injuries that render pregnancy and childbirth even more dangerous. Accordingly, it is essential that all humanitarian actors ensure access to safe abortion services for rape victims. As the scoping paper notes, “if humanitarian action is to fulfil its mission of saving lives and alleviating suffering, it must respond accurately to the risks that people face.”

Furthermore, access to safe abortion services is required not only as part of a needs-based approach to humanitarian aid, but also as part of the rights of these victims to all necessary medical care under IHL. Because rape is perpetrated against women and men in different ways and with different results, the injuries suffered necessitate different medical care. For example, a man raped with a stick who develops a fistula requires different treatment than a woman raped by a penis who becomes pregnant. While the “medical care and attention required by the condition” may require surgery or some other procedure in the man’s case, the pregnant woman would require an abortion.

The need to include safe abortion services for rape victims in humanitarian aid has been recognized in recent years by the UN Secretary General and UN Security Council. In two resolutions (2106 and 2122) the Security Council has called for humanitarian aid to ensure girls and women raped in war are provided the full range of medical services, including all options with regard to pregnancy (i.e. abortions).

- **How Humanitarian Action Should Look to Better Meet the Needs of People**

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. It must be non-discriminatory and meet the gender specific needs of women and girls, especially those raped and impregnated in conflict. In doing so, it 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 also protect medical personnel, guaranteeing that their sole focus can be on the well-being and health of their patients.

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

#### **ABOUT THE GLOBAL JUSTICE CENTER**

The Global Justice Center (GJC) is a non-profit non-governmental organization working for peace, justice, and security by enforcing international laws that protect human rights and promote gender equality.