

War Rape

The European Commission Violates EU Law & The Geneva Conventions

Together, Member States and the European Commission are the world's leading providers of humanitarian aid, for both conflict and non-conflict emergencies, with over €1.35 billion contributed in 2013. Although the EU makes a positive difference for millions on the ground, the EU's restrictive policy on abortion and the Geneva Conventions violates the inalienable rights of women and girls impregnated by war rape to all necessary medical care, including safe abortion services. This policy breaches EU Law, the Geneva Conventions, and UN Security Council Resolutions.

Background: What is the current EU position with respect to medical care for impregnated victims of war rape?

The Commission's policy is that the universal mandates of international humanitarian law do not govern the medical care given to women and girls raped and impregnated in war. Instead, the Commission applies national abortion laws as the appropriate medical care standard for these victims.¹ These women—civilians and combatants alike—are the only category of persons “wounded and sick” in armed conflict who are, in violation of their rights, deliberately denied a medical treatment in a humanitarian context.

1. EU law integrates international humanitarian law

EU law integrates the Geneva Conventions (or international humanitarian law (‘IHL’)) at three levels.

Article 214 TFEU specifies that “humanitarian aid operations shall be conducted in compliance with the principles of international law” (EU primary law). **Council Regulation (EC) No 1257/96** of 20 June 1996 concerning humanitarian aid mandates that “civilian operations to protect the victims of fighting...are governed by international humanitarian law and should accordingly be a part of humanitarian action”² (EU secondary law). The **EU guidelines on the promotion of compliance with international humanitarian law** require that humanitarian action must identify, without delay, situations where IHL applies and presume that the Commission and other EU

entities are themselves in compliance with IHL in their operations.³ In addition to primary and secondary EU law and policy, **the CJEU has found that EU institutions must comply with customary international law and Security Council Resolutions in their exercise of powers.**⁴ The provisions of the Geneva Conventions and their Additional Protocols relating to the wounded and sick are customary international law.⁵ Accordingly, EU institutions must comply with these rules when they engage in situations where international humanitarian law applies, including through the provision of humanitarian aid.

EU law and jurisprudence bind the European Union to comply with the mandates of the Geneva Conventions on medical care for the “wounded and sick”, including that all victims receive all necessary medical care based solely on their condition and without adverse distinction.

2. Women and girls raped in war have the absolute right to all necessary medical care, without discrimination, under the Geneva Conventions

The Geneva Conventions and their Additional Protocols deal with exceptional circumstances—armed conflict. During conflict, the Conventions set forth universal standards⁶ designed to, among other goals, lessen suffering in war. These laws define basic rights belonging to people not taking part in hostilities, and states' responsibilities to enforce those rights. Together with their Additional Protocols, they form IHL's core. **These mandates are absolute, non-negotiable and universal, and as a result, where domestic laws conflict with IHL, they supersede local law.**⁷

Central to IHL—since 1864—are the protections it provides to those considered the “wounded and sick”, including the right to receive **all necessary medical care**, “without adverse distinction”. Importantly, **IHL does not spell out what specific medical procedures should be given, but only guarantees that medical care must be based on the patient's condition.** What this means is that the outcome of care for women may not be less favorable than that for men, not

that the treatment must be identical.⁸ In the case of a war rape victim who becomes pregnant, this requires the option of abortion. While a man raped by a stick may need reconstructive surgery, a woman or girl raped by a penis may need an abortion. The same act of war—rape— leads to different injuries, requiring different medical care to reach the same health outcome.

This is made truer by the risks linked to childbirth. 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.⁹ United Nations Security Council Resolutions 2106 and 2122 underscore the urgency of states' providing safe abortion services for women and girls raped in war.¹⁰

In addition, in order to ensure that the “wounded and sick” receive their rights, IHL requires that doctors providing care to war victims must provide all the care necessary to advance their health or relieve their suffering, in all circumstances.¹¹ IHL also protects doctors with immunity from prosecution under national law,¹² when they provide care in line with the mandates of IHL.

3. The urgency of the issue: women and girls raped in war are denied necessary medical care

War rape, which has increasingly become a tactic of warfare, targets women, men, and children and is a defining characteristic of contemporary armed conflict. The ongoing Syrian conflict has seen an estimated 50,000 rapes and women there describe being drugged, blindfolded, and raped in groups.¹³ In Nigeria, girls captured by Boko Haram have been subject to sexual slavery and forced marriage.¹⁴

In the Democratic Republic of the Congo there is an estimated 1,150 women raped every day, 48 women raped every hour, and four women raped every five minutes.¹⁵ In Burma's rural areas, girls as young as eight reported being raped.¹⁶ Female war rape victims who are unable to obtain an abortion face increased risks of maternal mortality and are often re-victimized by depression, anxiety, and abandonment or violence in the family and community.¹⁷

4. The European Commission's policy breaches the Geneva Conventions and EU law

The Commission's humanitarian aid policy denies that the Geneva Conventions govern the medical care rights of impregnated war rape victims, and instead defers to national laws when treating these victims.¹⁸ **Essentially, this policy ignores the supremacy of the Geneva Conventions in conflict and violates the Geneva Conventions and the incorporation of the Geneva Conventions under EU law.**

The Commission's policy endangers the life and health of women and girls, legitimises forced childbearing as an appropriate medical outcome in EU funded facilities in war zones, and contravenes United Nations Security Council Resolutions 2106 and 2122.¹⁹

The CJEU is critical to ensuring that EU institutions comply with EU law, including international law, in the exercise of their powers. The Lisbon Treaty expanded the competence and duty of the CJEU to rule on legal issues raised by the Commission's acts.²⁰

Recommendation: Revise the EU's Policy on Abortion & the Geneva Conventions

The EU should revise their policies on humanitarian aid covering women raped in war to recognize those victims' absolute rights to all necessary medical care, including abortion.

About Global Justice Center

The Global Justice Center (GJC) works for peace, justice, and security by enforcing international laws that protect human rights and promote gender equality. We promote “power, not pity” as we advocate a model for justice that embraces the following tenets:

- Gender parity in power and under the law is essential to global security, justice, and prosperity for all.
- Discriminatory political and legal systems that fail to enforce human rights or ensure equal protection to women must be challenged.
- Progressive interpretation and enforcement of international law is a powerful catalyst for social and structural change and is necessary to establish a global “rule of law.”

Footnotes

- ¹Letters from Kristalina Georgieva, Comm. for Int'l Coop., Hum. Aid., and Crisis Response, to GJC, June 30, 2014 and Sept. 8, 2014; Letter from Claus Sørensen, Dir. Gen. of ECHO, to GJC, Dec. 20, 2012.
- ²Council Regulation (EC) No 1257/96 of 20 June 1996 concerning humanitarian aid – OJ L 163, 02/07/96 P. 0001-0006, preamble.
- ³EU Guidelines on Promoting Compliance with International Law, Official Journal C 303 of 15/12/2009, ¶¶ 1 and 15(a).
- ⁴Case C-286/90 Anklagemyndigheden v. Peter Michael Poulsen and Diva Nav. Corp. (1992), ¶¶ 9; Case T-115/94 Opel Austria GmbH v. Council (1997), ¶¶ 90; Case C-162/96, A. Racke GmbH Co. v. Hauptzollamt Mainz (1998), ¶¶ 45-46.
- ⁵See generally, ICRC, Customary International Humanitarian Law Database, Rules 87, 88, 90, 93, 110.
- ⁶Jelena Pejic, International Committee of the Red Cross, Non-Discrimination and Armed Conflict (March 2001).
- ⁷Common Article 2 to the Geneva Conventions of 1949; ICRC, Prof. Stand. For Protection Work Carried Out by Humanitarian and Human Rights actors in Armed Conflict and Other Sit. of Violence, (Oct. 2009).
- ⁸Geneva Convention III, art. 14; Geneva Convention IV, common Article 3; ICRC, Customary International Law Database, Rule 110.
- ⁹See 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.
- ¹⁰S.C. Res. 2106, ¶ 19, U.N. Doc S/RES/2106 (June 24, 2013); S.C Res 2122, recitals, U.N. Doc S/RES/2122 (Oct. 18, 2013).
- ¹¹Additional Protocol I to the Geneva Conventions, art. 16(2); Additional Protocol II to the Geneva Conventions, art. 10(2).
- ¹²ICRC, Commentary to Article 16 of Additional Protocol I of the Geneva Conventions, ¶¶ 665.
- ¹³Le Monde, Syria's Silent Crime: Systematic Mass Rape (Mar. 11, 2014).
- ¹⁴Human Rights Watch, “Those Terrible Weeks in their Camp” (2014).
- ¹⁵A. Peterman, et al., Estimates and Determinants of Sexual Violence against Women in the DRC (2011).
- ¹⁶Women's League of Burma, “If they had hope, they would speak,” The ongoing use of state-sponsored sexual violence in Burma's ethnic communities, November 2014, at ii, 5.
- ¹⁷Jill Trenholm, Women Survivors, Lost Children and Traumatized Masculinities: The Phenomena of Rape in Eastern DRC, 2013; PHR & Harvard Human. Ini., Nowhere to Turn: Failure to Protect, Support and Assure Justice for Darfuri Women, 2009.
- ¹⁸Letters from Kristalina Georgieva, Comm. for Int'l Coop., Hum. Aid., and Crisis Response, to GJC, June 30, 2014 and Sept. 8, 2014; Letter from Claus Sørensen, Dir. Gen. of ECHO, to GJC, Dec. 20, 2012.
- ¹⁹S.C. Res. 2106, ¶ 19, U.N. Doc S/RES/2106 (June 24, 2013); S.C Res 2122, recitals, U.N. Doc S/RES/2122 (Oct. 18, 2013).
- ²⁰Treaty on European Union, Art. 19(3); Dan Vataman, The CJEU after the reform established by the Lisbon Treaty (2014), at 4-9.

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