

PROTECTION OF HEALTH CARE PERSONNEL

IN ARMED CONFLICT
AND OTHER EMERGENCIES

VIOLENCE AGAINST
HEALTH CARE MUST END

IT'S A
MATTER
OF **LIFE**
& **DEATH**



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INTRODUCTION AND PURPOSE OF THIS DOCUMENT

In different parts of the world, medical and health care workers face situations of armed conflict or other emergencies. They are subject to threats, attacks or violence such as injury, death, abduction, abuse, intimidation or plunder of their assets. Frequently, these obstructions result in the disruption of health care services, just when these services are needed the most. The short-term consequences are obvious: patients are deprived of much-needed care and health care workers are prevented from rendering assistance. The long-term consequences, while difficult to assess, are equally if not more serious. Hard-won gains in reducing child mortality, improving maternal health and fighting diseases such as polio can be erased in mere minutes. In Bangladesh, violence against health workers is also existing. Physical or verbal abuses against staff or health facilities are regularly taking place. Even during the COVID-19 pandemic since the beginning of 2020, there are instances of abuse/intimidation against health care workers. These are only a few notable incidents out of many other reported and unreported cases. The present document aims at contributing to a better respect for health care workers and knowledge of the issue by outlining the main related principles and laws, both secular and Islamic.

Healthcare workers are engaged in saving the lives of the sick/injured people in times of peace and conflict. The Holy Quran has given much emphasis on the protection and safety of human life and clearly states in verse 32 of Surah Al Maedah in chapter 5 - **ومن أحيأها فكأنما أحيأ الناس جميعا** - '.... and if any one saved a life, it would be as if he saved the life of the whole humanity'. Protection of those who are engaged in saving life is equally important in the light of the above-mentioned verse of the holy Quran.

STRUCTURE OF THE DOCUMENT:

1. Ethical principles of health care in times of armed conflict and other emergencies as adopted by health care professional associations
2. Protection of health care in situations of armed conflict and in situations other than armed conflict in International Humanitarian Law (IHL) and International Human Rights Law (IHRL)
3. Islamic principles and guidance to protect health care professionals and health facilities

1. ETHICAL PRINCIPLES OF HEALTH CARE IN TIMES OF ARMED CONFLICT AND OTHER EMERGENCIES

In line with their professional ethics, major health care professional associations jointly endorsed the following ethical principles of health care in times of armed conflict and other emergencies. As such they commit themselves to work for the promotion and implementation thereof wherever possible, including by appropriate dissemination of the ethical principles amongst their members.¹

GENERAL PRINCIPLES

1. Ethical principles of health care do not change in times of armed conflict and other emergencies and are the same as the ethical principles of health care in times of peace.
2. Health care personnel shall at all times act in accordance with relevant international and national law, ethical principles of health care and their conscience. In providing the best available care, they shall take into consideration the equitable use of resources.
3. The primary task of health care personnel is to preserve human physical and mental health and to alleviate suffering. They shall provide necessary care with humanity, while respecting the dignity of the person concerned, with no discrimination of any kind, whether in times of peace or of armed conflict or other emergencies.
4. Privileges and facilities afforded to health care personnel in times of armed conflict and other emergencies are never to be used for purposes other than for health care needs.
5. No matter what arguments may be put forward, health care personnel never accept acts of torture or any other form of cruel, inhuman or degrading treatment under any circumstances, including armed conflict or other emergencies. They must never be present at and may never take part in such acts.

6. Health care personnel act in the best interest of their patients and whenever possible with their explicit consent. If, in performing their professional duties, they have conflicting loyalties, their primary obligation, in terms of their ethical principles, is to their patients.
7. In armed conflict or other emergencies, health care personnel are required to render immediate attention and requisite care to the best of their ability. No distinction is made between patients, except in respect of decisions based upon clinical need and available resources.
8. Health care personnel respect patients' right to confidentiality. It is ethical for health care personnel to disclose confidential information only with the patient's consent or when there is a real and imminent threat of harm to the patient or to others.
9. Health care personnel make their best efforts to ensure respect for the privacy of the wounded, sick and deceased, including avoiding the use of health care for the wounded and sick, whether civilian or military, for publicity or political purposes.

PROTECTION OF HEALTH CARE PERSONNEL

10. Health care personnel, as well as health-care facilities and medical transports, whether military or civilian, must be respected by all. They are protected while performing their duties and the safest possible working environment shall be provided to them.
11. Safe access by health care personnel to patients, health care facilities and equipment shall not be unduly impeded, nor shall patients' access to health care facilities and health care personnel be unduly impeded.
12. In fulfilling their duties and where they have the legal right, health care personnel are identified by internationally recognized symbols such as the Red Cross, Red Crescent or Red Crystal as a visible manifestation of their protection under applicable international law. Health care personnel shall never be punished for executing their duties in compliance with legal and ethical norms.

2. PROTECTION OF HEALTH CARE IN SITUATIONS OF ARMED CONFLICT

In times of armed conflict, International Humanitarian Law (IHL) provides extensive rules to protect health care personnel and facilities. By virtue of various provisions contained in the four Geneva Conventions of 1949 and the two Additional Protocols of 1977, medical personnel, units and transports – whether civilian or military – enjoy a special protection under IHL. Personnel engaging in medical tasks such as doctors, nurses, stretcher-bearers or ambulance drivers must always be respected and protected unless they commit, outside their humanitarian function, acts harmful to the enemy. They cannot be intimidated or punished for impartial health care services provided to the wounded and sick in accordance with medical ethics.

Similarly, medical units such as hospitals, clinics and medical transports such as ambulances, hospital ships and medical aircraft assigned to medical purposes must be respected and protected in all circumstances. This means that medical units and facilities may not be attacked and access to them may not be limited. If any medical service provider or units fall in the hands of the opposing side, they should be protected such that they could continue their functionality. During armed conflict, medical personnel, units and transports are entitled to use the distinctive emblem – the Red Cross, the Red Crescent or the Red Crystal – as a protective device.

Most of these provisions concerning the protection and respect of medical and health care personnel and medical facilities are customary International Humanitarian Law and therefore all parties to an armed conflict are obliged to observe them. Violation of these provisions are subject to prosecution and sanctions including as war crimes.

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1. The Endorsement of these principles includes, amongst others, the following international organizations: World Medical Association (WMA), International Committee of Military Medicine (ICMM), International Council of Nurses (ICN), International Pharmaceutical Federation (FIP) and International Committee of the Red Cross (ICRC).



PROTECTION OF HEALTH CARE IN SITUATIONS OTHER THAN ARMED CONFLICT

In situations of peace, and other situations of violence that do not reach the threshold of armed conflict, International Human Rights Law (IHRL) and domestic law provide protection for health care personnel and facilities. In principle, IHRL applies at all times, unless the concerned State decides to derogate from it. Though less specific than IHL, IHRL contains several rules protecting health care.

IHRL ensures the right to health and medical care for everyone without discrimination. Like every human being, medical personnel are also protected under IHRL from attempts upon their lives or violence against their person and are entitled to the right to security in the same way as the wounded and sick. Besides, medical personnel must not be prevented from treating the wounded and sick in accordance with medical ethics. Under the right to health, States have also an obligation to ensure access to health infrastructure and respect for medical units and transports. States may not target them or use them to launch law enforcement operations or to carry out other similar measures.

As a State Party to major human rights instruments such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESR), Bangladesh undertakes to ensure the right to health, life and security of every individual within its territory or subject to its jurisdiction. The Bangladesh Constitution, as the supreme law of the land, also envisages the protection of these basic rights for every human being including health care professionals and workers.

3. ISLAMIC PRINCIPLES AND GUIDANCE TO PROTECT HEALTH CARE PROFESSIONALS AND HEALTH FACILITIES

About 85% of the citizens of Bangladesh are Muslims. In Islam, the Holy Quran and the Hadith are considered to be a complete code for life. In the Holy Quran, there are many verses which regulate warfare and include the protection of health care workers. Below are a few examples:

Verses of the Holy Quran guiding the principle of protection of health care professionals

- 2:190: And fight in the way of Allah those who fight you but transgress not the limits. Truly, Allah likes not the transgressors.
- 8:61: But if the enemy incline to peace, you also incline to it and fear Allah He is the All-Hearer, the All-Knower.
- 9:6: If anyone of the disbelievers seeks your protection, then grant him protection so that he may hear the word of Allah; and then escort him to where he can be secure. That is because they are men who know not.
- 4:90: If they (the enemy) withdraw from you and do not fight you and instead send you guarantees of peace then Allah has opened no way for you to war against them.

Most of the Muslim Scholars said that “الذين يقاتلونكم” in verse 2:190 of the Holy Quran means those who participate in the war against you, i.e. fighting is confined to those who fight against the Muslims and attack them first and as such, Muslims should not initiate hostilities. Prisoners of War (POWs), injured, sick, women, children, elderly, peasants, servants, monks, health care personnel & those in similar positions cannot be fought against because they do not participate in the war. This is the principle of distinction in Islam.

Attacking the health care professionals and impeding the access to health care facilities of those who do not or no longer participate in hostilities by violating the instructions of the Quran subjects to ‘mischief’. The Holy Quran categorically admonishes not to seek mischief: ولا تبغ الفساد في الأرض إن الله لا يحب المفسدين (... and don't seek mischief in earth as Allah does not love those who do mischief, Quran 28/77).

HADITH RELATING TO THE PROTECTION OF HEALTH CARE PROFESSIONALS

Prophet Muhammad (peace be upon him) before dispatching an army commanded them as follows: لا تقتلن ذرية و لا عسيفا (Don't kill children and servants) (Kitab al- Siyar al-Kabir, 4:186, Abdur Razzaq, Musannaf, hadith no. 9382). By analogy, employees such as those working in factories, doctors and health care professionals taking care of the wounded and sick soldiers, as well as those in a similar position, cannot be killed because they fall under the meaning of 'usafa' (servants) (Al- Jihad wa al-Qital fi al-Siyasa al-Shar'iyah, 2:1247). In the above-mentioned Hadith Prophet Muhammad (peace be upon him) has clearly instructed his companions and soldiers not to kill children and servants because traditionally they did not take part in hostilities. For being a legitimate target in war it is required that the person participates directly in hostilities. Those who don't take direct part in hostilities must not be targeted. Health care workers do not take part in hostilities, rather they perform the most important duty of saving lives which is not only important for their own people but might also benefit at times their opponents, so they are entitled to this protection."

The moment a soldier withdraws from the fighting, he ceases to be a combatant. Islam makes a distinction between combatants and non-combatants. The Holy Quran ordains to fight only with the former and not to fight with the latter, hence puts emphasis on the protection of the latter. The Prophet Mohammad (pbuh) indeed refrained from retaliation in practice. On one occasion, when Mecca was conquered, he ordered that the rules of engagement be announced with a loud voice. One such rule was that the injured must not be slain and escapees not chased or prosecuted.

Article 3 of the Cairo Declaration on Human Rights in Islam states that, "In the event of the use of force and in case of armed conflict, it is not permissible to kill non-belligerents such as old men, women and children. The wounded and the sick shall have the right to medical treatment". Islam means peace, hence the main reason for protecting non-combatants, wounded, POWs, civilians, medical and health care staff and their property is to bring humanity and establish peace even in armed conflict and emergencies.

CONCLUSION


It is hoped that this document will help to better understand and serve as a guide regarding the main principles and laws, both secular and Islamic, on health care workers' protection in armed conflict and other emergencies. By referring to this document, religious and community leaders may help their people to better understand the crucial role that health care workers play and the importance of their work. Religious scholars could, for instance, emphasize universal values and sacred texts as a basis for respect and protection of health care personnel and facilities.

The ICRC helps people around the world affected by armed conflict and other violence, doing everything it can to protect their dignity and relieve their suffering, often with its Red Cross and Red Crescent partners. The organization also seeks to prevent hardship by promoting and strengthening humanitarian law and championing universal humanitarian principles.

People know they can count on the ICRC to carry out a range of life-saving activities in conflict zones and to work closely with the communities there to understand and meet their needs. The organization's experience and expertise enables it to respond quickly, effectively and without taking sides.

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