



ICRC

ADVISORY SERVICE

ON INTERNATIONAL HUMANITARIAN LAW

INTERNATIONAL HUMANITARIAN LAW AND PERSONS WITH DISABILITIES

Persons with disabilities often have difficulty accessing basic services, such as health care, water, sanitation, shelter and food, as well as other necessary services relating to their pre-existing disabilities. These difficulties are exacerbated in situations of armed conflict when they may have to leave behind what they know and flee to safety, struggle to cope with the change in terrain and/or lose their mobility aids or equipment. In many cases, normal health and social services are disrupted, or inaccessible – either physically, or because information on available services is not provided to those with disabilities in the way that they need.

Furthermore, the number of people with disabilities can increase during armed conflict, owing to new impairments or because of conflict-related injuries, poor standards of surgical and medical care, breakdown in support structures and preventive health care, and effects on mental health.

Persons with disabilities are also at greater risk of violence, including of a sexual nature, while those held in places of detention can face numerous challenges in obtaining appropriate care.

International humanitarian law (IHL) is a set of rules that, in times of armed conflict, seeks – for humanitarian reasons – to protect persons who are not, or are no longer directly participating in hostilities, and to restrict means and methods of warfare. IHL requires parties to armed conflicts to afford special respect and protection to persons with disabilities and helps ensure their inclusion. A number of weapons-related treaties aims to prevent certain disabilities from occurring by prohibiting the use of particular weapons and reducing the dangers they pose. They also seek to ensure that victims receive appropriate assistance.

In addition to IHL, international human rights law (IHRL) – particularly the Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol – contains important protections. For example, the CRPD recognizes States Parties' obligations under, *inter alia*, IHL and IHRL and obliges States Parties to ensure the protection and safety of persons with disabilities during armed conflict (Art. 11).

INTERNATIONAL HUMANITARIAN LAW

Respect for and protection of persons with disabilities

General protection

In situations of international and non-international armed conflict,

the general protections afforded to civilians and persons rendered *hors de combat* apply to persons with disabilities without any adverse distinction. These rules are binding on States and non-State groups.

These general protections essentially comprise:

The obligation to treat persons with disabilities humanely in all circumstances

Persons with disabilities benefit from the general obligation under IHL to treat every person humanely, in all circumstances, and without any *adverse distinction*¹ founded on race, colour, religion or faith,

¹ 'Adverse' means differences in, or preferential treatment based on a person's specific needs, including in

relation to disabilities. For more information on the prohibition of adverse distinction, see: ICRC Commentary on

the First Geneva Convention and, in particular, the Commentary on common Article 3, pp. 198–202, paragraphs 565–

sex, birth or wealth, or any other similar criteria.² Implementing the obligation to treat persons humanely also means, for instance, taking into account the specific physical and mental conditions, as well as the environmental barriers, affecting persons with disabilities.

The obligation to allow and facilitate access to humanitarian relief

Parties to an armed conflict must allow and facilitate access to humanitarian relief for civilians in need (GC IV Art. 23; AP I Art. 70; AP II, Art. 18; and Rule 55 of the ICRC customary IHL study (CIHL)). Priority in the implementation of humanitarian relief includes persons with disabilities.

The specific humanitarian relief activities that should be prioritized in favour of persons with disabilities were highlighted by the 31st International Conference of the Red Cross and Red Crescent in its four-year Action Plan on IHL, in Objective 2.3, paragraph 4: “States and components of the Movement committed in the action plan to take the specific needs of persons with disabilities into account in the planning, delivery and monitoring of their humanitarian assistance efforts, including with regard to access to shelter, water, sanitation, food distribution, education, medical care, physical rehabilitation, transportation, communication, and socio-economic inclusion programmes. They also committed to consult, when feasible, at all relevant stages of planning and implementation

of their humanitarian assistance activities with the persons themselves, their families or local organizations of persons with disabilities.”

*Conduct of hostilities and the protection of persons with disabilities*³

Under IHL, civilians are protected against direct attacks and indiscriminate attacks (AP I, Art. 51(2); CIHL, Rule 1; AP I Art. 51(4) and (5); CIHL, Rules 11–13). For example, parties to an armed conflict following the principle of precaution (AP I, Arts. 57 and 58, CIHL, Rules 14 and 15), must take into account the needs of persons with disabilities.

Specific protection

In situations of international armed conflict, the Geneva Conventions of 1949 do not define the words ‘wounded’ and ‘sick’⁴ – their precise meaning is a matter of common sense and good faith. Article 8(a) of the Additional Protocol I of 1977 does, however, provide a definition of the terms ‘wounded’ and ‘sick’, and stipulates that such persons may include those with disabilities. The wounded and sick must be respected and protected at all times (GC I, Arts. 4 and 12; GC II, Arts. 5 and 12(1); GC IV, Art. 16(1); AP I, Art. 10(1); CIHL, Rule 110). Violence against, and attempts upon the life of, those who are wounded and sick are strictly prohibited. The willful killing of a person who is wounded or sick, or willfully causing great suffering or serious injury to their person, constitute grave breaches of the Geneva

Conventions of 1949 and thus are war crimes.⁵ In certain circumstances, the denial of medical treatment may constitute cruel or inhuman treatment, an outrage upon human dignity, or even torture, if the necessary criteria are met. Persons with disabilities must therefore receive, to the fullest extent practicable, with the least possible delay and without discrimination, the medical care required by their condition. There must be no distinction founded on any grounds other than medical ones, and they must be protected from ill-treatment.

In situations of non-international armed conflict, treaty-based and customary IHL provide similar protection for the wounded and sick (see common Art. 3;⁶ CIHL, Rules 109–111; and, when applicable, AP II, Art. 7 (Protection and care) and Art. 10 (General protection of medical duties)).

Under IHL, persons with disabilities who are affected by armed conflict are also entitled to special respect (being spared from attack) and protection (help and support), especially with regard to their evacuation and detention or internment (GC III, Arts. 16, 30, 49 and 110; GC IV, Arts. 17, 27, 85, 119 and 127; CIHL, Rule 138). For instance, in a situation of international armed conflict, GC III requires that special facilities be established in prisoner-of-war camps “for the care to be given to the disabled [...] and for their rehabilitation pending repatriation” (Art. 30), and GC IV calls on parties to “conclude

580, available at: <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/365?OpenDocument>

² The inclusion of the phrase ‘or any other similar criteria’ indicates that the list is not exhaustive and that it may also include distinctions on the basis of disabilities. For more information, see the ICRC Commentary on the First Geneva Convention, 2nd edition, and, in particular, the Commentary on Art. 12, p. 495, para. 1393, available at: <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/365?OpenDocument>

³ For more information on the three principles regulating the conduct of hostilities (distinction, precaution and

proportionality), see the ICRC Advisory Service legal factsheet entitled *What is International Humanitarian Law?*

available at: <https://www.icrc.org/en/document/what-international-humanitarian-law> and the ICRC article ‘International law on the conduct of hostilities: overview’, available at: <https://www.icrc.org/en/document/conduct-hostilities>

⁴ For more information, see the ICRC Advisory Service legal factsheet entitled *Respecting and Protecting Health Care in Armed Conflicts and in Situations Not Covered by International Humanitarian Law*, available at:

<https://www.icrc.org/en/document/respecting-and-protecting-health-care-armed-conflicts-and-situations-not-covered>

⁵ For more information, see the ICRC Advisory Service legal factsheet entitled *Penal repression: Punishing war crimes*, available at:

<https://www.icrc.org/en/document/penal-repression-punishing-war-crimes>

⁶ For more information on the ‘wounded and sick’ and their protection under common Article 3, see: ICRC Commentary on the First Geneva Convention, 2nd edition, paras. 739–749, available at: <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/365?OpenDocument>

local agreements for the removal from besieged or encircled areas” of persons with disabilities (Art. 17). In situations of non-international armed conflict, they are also entitled to special respect and protection (CIHL, Rule 138).

Weapons causing superfluous injury, or unnecessary suffering

IHL endeavours, in all armed conflicts, to limit the risk of death and injury, including the risk of disability, caused by the conduct of hostilities and the use of weapons. In addition, it limits the right of the parties to an armed conflict to choose methods or means of warfare. In particular, it prohibits, in both international and non-international armed conflicts, the use of means and methods of warfare that cause superfluous injury, or unnecessary suffering (AP I, Art. 35(2); CIHL, Rule 70).

The inevitability of a weapon causing permanent disability is an important factor in evaluating whether or not the use of the weapon is prohibited under this rule. For instance, blinding laser weapons have been specifically prohibited on the basis that deliberately causing permanent blindness amounts to the infliction of superfluous injury, or unnecessary suffering (see Protocol on Blinding Laser Weapons (Protocol IV) of the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or Have Indiscriminate Effects (CCW); and CIHL, Rule 71). The serious disabilities that frequently result from the use of incendiary weapons prompted States to restrict their use against persons (CCW Protocol III on the Prohibitions or Restrictions on the Use of Incendiary Weapons; and CIHL, Rule 85).

Assistance to victims of anti-personnel mines, cluster munitions and explosive remnants of war

Anti-personnel mines and cluster munitions are a major cause of disability. In addition to prohibiting their use, States have recognized a collective responsibility to help advance care for victims of these weapons by integrating victim assistance commitments in the international instruments prohibiting their use. The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (Art. 6) and the Convention on Cluster Munitions (Art. 5) contain provisions to advance the care and rehabilitation of victims. The Protocol on Explosive Remnants of War of War (Protocol V to the Convention Prohibiting certain Weapons) recognizes that States parties 'in a position to do so shall provide assistance for the care and rehabilitation and social and economic reintegration of victims' of these type of explosives. (Art 8(2))

Protection and assistance to internally displaced persons with disabilities

Internally displaced persons (IDPs) with disabilities are also entitled to special respect and protection. The United Nations Guiding Principles on internal displacement apply without discrimination of any kind, including disability. They also recognize that certain IDPs “shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs”. In addition, IDPs with disabilities are entitled to receive “to the fullest extent practicable and with the least possible delay” medical care and attention “without distinction on any grounds other than medical ones” (Principles 4 and 19). The African Union Convention for the protection and assistance of internally displaced persons in Africa

(Kampala Convention) establishes an obligation on States Parties to provide special protection and assistance to IDPs with special needs, including to persons with disabilities (Art. 9(2) (c)).

Implementing IHL at the national level

States have an obligation to adopt and apply domestic measures to implement IHL, including with respect to persons with disabilities. Such measures must be taken in both wartime and peacetime and can include: punishing violations of obligations listed in the above-mentioned instruments, ensuring that protected persons enjoy fundamental guarantees during armed conflict, and taking into account IHL when developing and acquiring new weapons and adopting new methods of warfare. Some of these measures will require new legislation or regulations to be adopted, while others will require the development of educational or assistance programmes, recruitment or training of personnel, or the introduction of planning and administrative procedures.

The ICRC, through its Advisory Service on IHL, provides advice and assistance to States on their obligations to implement IHL at the national level. The ICRC also provides assistance to victims of explosive remnants of war in the form of emergency and hospital care, and by supporting physical rehabilitation.

In some countries, there may also be a role for professional and educational bodies, medical associations, National Red Cross and Red Crescent Societies, or other voluntary organizations.

For more information on turning IHL rules into action, please refer to the Advisory Service

factsheet entitled *Implementing IHL: from law to action*.⁷

INTERNATIONAL HUMAN RIGHTS LAW

rotection As with IHL, the aim of the rules of IHRL is to protect the lives, health and dignity of individuals. IHRL applies at all times, i.e. both in peacetime and in situations of armed conflict, though some derogations from some IHRL rules are permitted in situations of public emergency threatening the life of the nation (such derogations must not contravene IHL). Certain human rights provisions are, however, non-derogable, even during armed conflict. These include the right to life and the prohibition of torture or cruel, inhuman or degrading treatment or punishment, and the prohibition of discrimination. The same would apply to essential economic, social and cultural rights.⁸

Disability inclusion is also a human rights issue, and the need for States to take action to ensure the full and equal enjoyment of all human rights by persons with disabilities is addressed comprehensively in the CRPD, which was adopted on 13 December 2006 and entered into force on 3 May 2008. The CRPD refers to persons with disabilities as

“including those who have long-term physical, mental, intellectual or sensory impairments, which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others” (Art. 1).

The Preamble to the Convention recalls that the full protection of human rights instruments must be afforded to persons with disabilities in situations of armed conflict. The CRPD requires States Parties to take, in accordance with their obligations under international law (including IHL), all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters (Art.11). In situations of armed conflict, Art. 11 must be read in conjunction with the IHL obligation on the parties to a conflict to ensure special respect and protection for “persons with disabilities”. For instance, a hostile party could be required to pay particular attention to the specific needs of and challenges faced by persons with a disability in evacuation or displacement situations, and to the needs of host communities.⁹

States party to the CRPD are required to take measures to ensure that persons with disabilities have access to mobility devices (Art. 20) and rehabilitation services (Art. 26), and that they enjoy full inclusion and participation in the community (Arts. 19 and 26).

National implementation

With the aim to fully implement the Convention, States Parties to the CRPD are required to introduce measures that promote the human rights of persons with disabilities without discrimination. This includes enacting anti-discrimination legislation, or eliminating discriminatory laws and practices, adopting policies and programmes, ensuring that goods, services and facilities are accessible to persons with disabilities, and creating national monitoring mechanism..

The Committee on the Rights of Persons with Disabilities monitors implementation of the CRPD. The Optional Protocol to the Convention gives the Committee competence to examine individual complaints with respect to alleged violations of the CRPD.

01.06.2017

⁷Available at: <https://www.icrc.org/en/document/implementing-international-humanitarian-law-law-action>

⁸ For more information on the non-derogability of certain economic, social and cultural rights, see: Committee on Economic, Social and Cultural Rights,

General Comments 3, 7, 12, 14 and 15, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?TreatyID=9&DocTypeID=11

⁹ For more information on the application of IHL and IHRL, please refer to the ICRC Advisory Service factsheet entitled *IHL*

and *IHRL: Similarities and Differences*, available at: <https://www.icrc.org/en/document/international-humanitarian-law-and-international-human-rights-law-similarities-and>