HEALTH CARE IN DANGER

TRAINING MODULE FOR MEDICAL STUDENTS, HEALTHCARE WORKERS AND TEACHERS

VIOLENCE AGAINST HEALTH CARE MUST END IT'S A MATTER OF LIFE & DEATH

ICRC

FOCUS

INTERNATIONAL COMMITTEE OF THE RED CROSS (ICRC)
IN COLLABORATION WITH THE ASSOCIATION OF PUBLIC HEALTH PHYSICIANS OF NIGERIA

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This Health Care in Danger training module was developed by the International Committee of the Red Cross (ICRC), Nigeria in collaboration with the Association of Public Health Physicians of Nigeria (APHPN). This training module is aimed to serve as a guide and source for medical trainers in Nigerian tertiary institutions when delivering lectures on the Protection of Health Care in Nigeria.

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FOREWORD

The first thing that came to mind as I scanned through the sections of this module, is the hard work involved in compiling this book that brings to fore the reality of accessing and delivering healthcare services during crisis. Ordinarily these issues are not directly addressed in most textbooks of public health, but it has become important to update our knowledge due to the dynamic nature of our environment. In addition to presenting the overall challenges of health care delivery in times of armed conflict, this book will serve as a guide material for healthcare workers, medical students and their teachers.

This module comprises five chapters. It begins with the introduction, chapter two; Legal framework for the protection of healthcare in Nigeria, chapter three; rights and responsibility of healthcare workers, chapter four; the emblems of the Geneva convention and the final chapter talks about addressing the challenges of access to and delivery of healthcare in armed conflict and other situations of violence.

The International Committee of the Red Cross has vast experience in the context of crisis with a mandate to assist and protect victims affected by armed conflict and other situations of violence. This can easily be seen by reading through this book as it brings practical experiences that the healthcare community can learn from. Unquestionably, I recommend this book for all medical students, teachers and healthcare workers. Perhaps this will not be the final edition as room should be given for review especially with the dynamic nature of our environment.

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MODULE ONE

INTRODUCTION

Armed conflict and other situations of widespread violence generate immediate and additional health-care requirements for wounded and sick people. These requirements increase at the very time when insecurity makes it more difficult to address them.

A sound, intact health-care infrastructure and the safety of health-care personnel are prerequisites for the delivery of health care. When people take up arms for whatever reason, health care is disrupted in a variety of ways: fighting prevents personnel from reaching their place of work; health-care facilities and medical vehicles are inadvertently damaged; soldiers or police forcibly enter health-care facilities looking for enemies or "criminals;" and sometimes gaining control of a hospital is an objective of fighters. In the most serious cases, health-care facilities are directly targeted, the wounded and the sick are attacked, and healthcare personnel are threatened, kidnapped, injured or killed. In brief, it may become difficult, even impossible, to provide adequate health care because of these and many other forms of insecurity.

Violence against health care, both actual and threatened, is often an immediate consequence of armed conflict and other forms of violence that fall short of armed conflict, such as widespread rioting or demonstrations. A single act of violence that damages a hospital or kills health-care personnel has a knock-on effect on many other people requiring care, and especially the wounded and the sick, who suffer even more. For example, a serious security incident can shut down a surgical hospital which would normally treat thousands of wounded people per year drastically reducing, if not eliminating surgical services for the wounded. This is precisely what happened when six International Committee of the Red Cross nurses were killed by unidentified gunmen in the International Committee of the Red Cross hospital in Novi Atagi, Chechnya, on 17 December 1996. The tragedy extended beyond the needless death of those Red Cross health-care workers to the thousands of wounded people who, as a result of that incident, lost access to essential surgical services. In the same way, catastrophic damage was inflicted on Somalia's already weak health-care infrastructure when a bomb killed more than twenty people, including two doctors and an unverified number of medical students, at a graduation ceremony in Mogadishu in December 2009. If a doctor in Somalia gives 250 consultations in a week, and if 15 medical students or doctors were killed, their deaths represent more than 150,000 consultations per year that will not take place as a result of that single attack.

In some situations, hospital staff in areas prone to conflict are most concerned, in terms of their own safety, about direct threats from relatives of the wounded and the sick; these threats may have been triggered by dissatisfaction with the available health-care services. This triggers emigration of healthcare workers away from such areas thus worsening health status of the wounded, sick and the whole population.

Violence against health-care workers, facilities and vehicles, therefore, is a humanitarian issue with immediate, widespread and long-term effects that should be addressed.

Two staff members of the Somali Red Crescent Society and an ICRC employee during a first aid exercise. Nairobi.

Borno State, Maiduguri, hospital. An ICRC mobile surgery team treats a patient.

SETTING THE SCENE: FICTIONAL SCENARIOS

Armed conflicts and other emergencies affect medical personnel in various ways. In many instances, they give rise to difficult dilemmas for health-care personnel. Here are some scenarios to consider. What would you do?

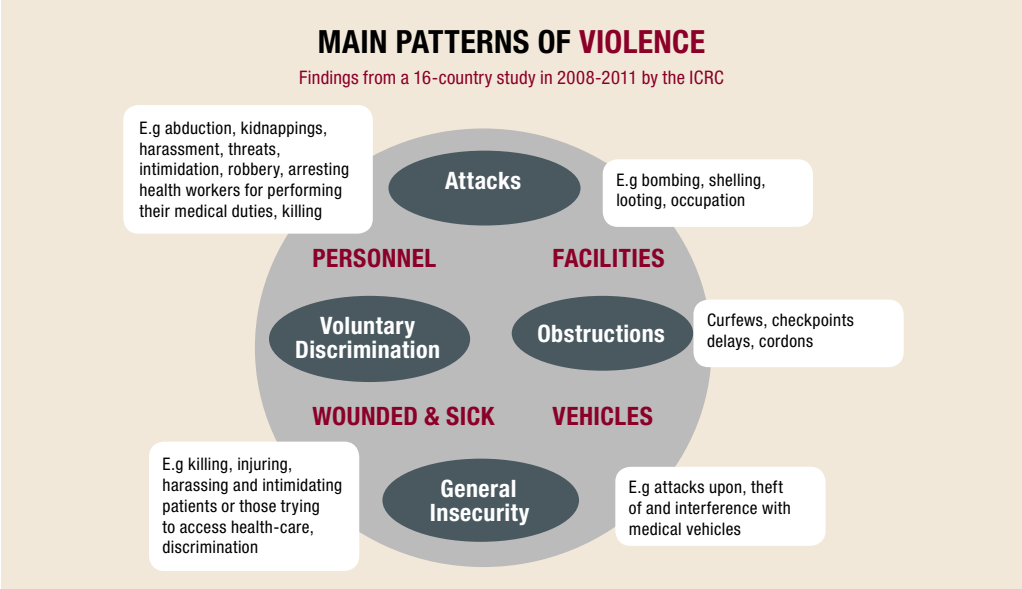
- You are a military doctor; ten wounded soldiers are brought to your mobile surgical hospital following intense fighting. Two of the wounded are enemy soldiers; one has a serious abdominal wound. A senior officer orders you not to treat the wounded enemy soldiers until later.
- You are the only doctor in a small village public hospital, which has admitted a large number of people who were injured during widespread violence in the village. In the morning, when you are due to go to work, you are not sure if you will be able to reach the hospital safely.
- You are an army medic carrying only a pistol and wearing a red cross armband. You are giving basic care to a wounded comrade. It seems likely, as prolonged fighting against superior numbers of enemy troops draws to a close, that your small unit will be captured.
- You are a medical officer in a city and there is an ongoing cult gang clash. You receive victims of gunshot wound in your facility but your medical supervisor who is away on leave ask you to ensure the victims presents a police report before you give medical attention.

None of these scenarios are rare. For many health-care personnel, they are also not fictional, but reflections of their daily struggles in doing their job.

PATTERNS OF VIOLENCE AGAINST HEALTH CARE

The World Health Organization defines violence as "*the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, which either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment, or deprivation.*"

Violence against healthcare is multi-dimensional and occur in various patterns. From a sixteen-country study conducted by the International Committee of the Red Cross[1], the main patterns of violence include: attacks on health care workers, health care facilities and medical vehicles, obstructions or impeding access to health facilities and voluntary discrimination of the wounded and sick.



1. https://www.icrc.org/en/doc/resources/documents/report/hcid-report-2011-08-10.htm

CHALLENGES OF HEALTH CARE SERVICES AND DELIVERY IN ARMED CONFLICTS AND OTHER EMERGENCIES

In all circumstances, there are necessary conditions for delivering health care to the wounded and sick:

- availability of health care workers;
- the availability of infrastructure and materials;
- the application by the health-care worker of professional knowledge and expertise within a relationship of trust.

Health care is vulnerable to a variety of constraints in armed conflicts and other emergencies because any of these conditions may be unmet. Nevertheless, even in the most rudimentary conditions, when the required materials are lacking, effective health care can often still be delivered. "Application by the health-care worker of professional knowledge and expertise within a relationship of trust" is still possible. However, the one overriding constraint is lack of security; this is also the most difficult constraint to address. When you, your colleagues and the people you are trying to care for are in danger, frightened, tired or shocked, giving even the most basic forms of treatment can be difficult or impossible and the essential notion of trust made irrelevant.

Health care workers must also recognize that health care in armed conflicts or other emergencies provides the unscrupulous with many opportunities for engaging in dangerous or unethical activities on a large scale – for example, distributing, prescribing and selling expired, inappropriate or counterfeit drugs. Those involved in such activities take advantage of the circumstances, the vulnerability of the wounded and sick, and the absence of oversight of health care in such situations.

When they are stretched to their physical and psychological limits, many health-care personnel working in dangerous situations find it very difficult to think about issues linked to their responsibilities. But, the worse the situation in terms of the constraints, the more important these issues become; unfortunately, when these health-care personnel are confronted by these issues, their reactions are often extremely emotional. Heated arguments between health-care personnel, amidst large numbers of wounded or sick people, are regrettably frequent; they must be avoided. On the other hand, in certain difficult circumstances, a calm discussion with colleagues may be impossible; and when such discussions are possible, they may be unhelpful or lead to people being excessively critical of one another – or give the appearance of being both. In brief, your intellectual abilities are required most, precisely when it is most difficult to apply them.

Another important factor – which can be a constraint – is the media. Armed conflicts and other emergencies are the most important subjects in world news. The media has an important role in focusing attention on the situation in question, and health care can be a source of newsworthy images and stories. However, journalists can be extremely intrusive. When faced with an enquiry from the press, many health-care workers feel that they should "tell their story," give their opinion or respond to demands for access to the wounded and sick. This may not be in the interests of either the personnel concerned or the people they are trying to help. In addition, health-care personnel often provide testimonies – assumed, as a matter of course, to be authoritative – about the nature and extent of the violence, the weapons used or the impact of the violence. Whether or not these testimonies are accurate, there are obvious political and security implications.

THE HEALTH CARE IN DANGER INITIATIVE

Violence against patients, health-care workers, facilities and vehicles, therefore, is a humanitarian issue with widespread and long-term effects. The International Red Cross and Red Crescent thus launched the Health Care in Danger (HCiD) initiative to address the issue of violence against patients, health workers, facilities and vehicles, and ensure safe access to and delivery of health care in armed conflict and other emergencies.

The initiative aims at raising public awareness of the issue, collect, consolidate and improve field practices, and mobilize a broad community of concern.

For more information: https://healthcareindanger.org/hcid-project/

MODULE TWO

LEGAL FRAMEWORK FOR THE PROTECTION OF THE MEDICAL MISSION IN ARMED CONFLICT AND OTHER EMERGENCIES

Under international and domestic law, people who are wounded or who fall sick in armed conflicts or other emergencies must be respected and protected; and they must also be provided with effective and impartial health care. Those who care for them, as well as their facilities and vehicles, must equally be respected and protected. They must not be attacked, and health-workers must not be harassed or punished for carrying out their work in line with medical ethics.

In times of armed conflict, international humanitarian law (IHL) provides specific rules to protect access to health care. These rules bind States and non-State armed groups. In situations of collective violence that do not reach the threshold of armed conflict, what is called here "other emergencies", only international human rights law (IHRL) and domestic law apply. It is important that health-care workers have basic awareness of their rights – as well as those of the patients they care for – so as to facilitate their implementation.

INTERNATIONAL HUMANITARIAN LAW: PROTECTION OF MEDICAL MISSION IN ARMED CONFLICTS

International humanitarian law (IHL) – also known as 'the law of armed conflict' or 'the law of war' – is a body of international law that applies only in situations of armed conflict and not in other emergencies.

An armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State.[2] An armed conflict can be of two characters:

- It can either be international when there is resort to armed force between two or more States of any intensity.
- It can be non-international, which covers situations of protracted armed confrontations occurring between governmental armed forces and the forces of one or more armed groups, or between

2. ICTY, The Prosecutor v. Dusko Tadić, IT-94-1-AR72, Appeals Chamber, Decision, 2 October 1995; available on http://www.un.org - Paragraph 70.

such groups arising on the territory of a State party to the Geneva Conventions of 1949. The armed confrontation must reach a minimum level of intensity and the parties involved in the conflict must show a minimum level of organization.

IHL has two major branches:

- rules protecting victims of armed conflicts, i.e. all persons who do not or no longer participate in hostilities. This includes soldiers and fighters who are hors de combat due to wounds or sickness, detainees, and the civilian population.
- rules limiting the choice in the way military operations are conducted (methods of warfare) and the weapons (means of warfare) that may be used.

Under the IHL, the medical mission consists of:

- the wounded and sick;
- medical personnel;
- medical units and transports.

PROTECTION OF THE WOUNDED AND SICK

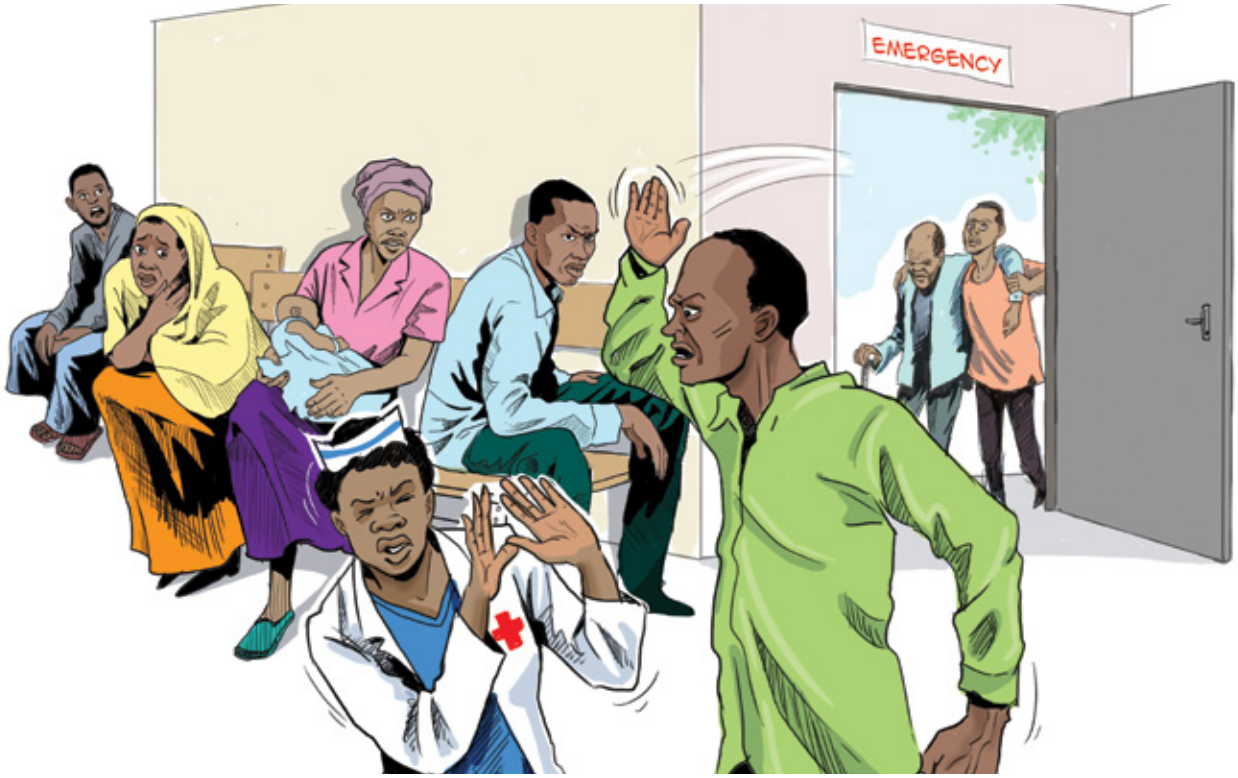
Under IHL, the term of the wounded and sick refers to persons, whether military or civilian, who because of trauma, disease, or other physical or mental disorder or disability (such as wounds or injury), are in need of medical assistance or care and who refrain from any act of hostility. This terms also cover maternity cases, new-born babies and other persons who may be in need of immediate medical assistance or care, such as the infirm or expectant mothers, and who refrain from any act of hostility.[3]

It is important to note that a necessary pre-condition for the enjoyment of the protection under this category is not simply that the persons require care from a medical perspective, but in addition that such persons 'refrain from any act of hostility'. Therefore, a wounded combatant who continues fighting the enemy for instance does not enjoy the protection as a wounded and sick person under IHL.

IHL provides several rules on the protection of the wounded and the sick. The most fundamental of these rules is that the wounded and the sick must be respect and protected and this entails that in all circumstances, they be treated humanely. Other rules on the protection of the wounded and sick are that:

- The wounded and sick must receive, as fully as practicable and with the least possible delay, the medical care and attention required by their condition. No distinction/ priority may be made among them founded on any grounds other than medical ones.

3. Article 8(a) Additional Protocol I to the Geneva Conventions.
4. Article 8(c)& (e) Additional Protocol I to the Geneva Conventions.



- The wounded and sick must be searched for, collected and evacuated, whenever feasible and particularly after the fighting has ceased.
- The wounded and sick must not be attacked, abused or otherwise ill-treated. This includes an explicit prohibition of murder or extermination, subjecting such persons to torture, conducting medical experiments, unwarranted mutilations or removal of tissue or organs that is not warranted by their state of health and inconsistent with generally accepted medical standards, or deliberately leaving them without medical care or exposure to contagion or infection).

PROTECTION OF MEDICAL PERSONNEL

The protection of the medical personnel is a corollary to the right of the wounded and sick to gain access to health care. Clearly, the wounded and sick cannot enjoy the protection and access medical care unless the medical personnel coming to their aid also benefit from such protection.

Medical personnel under IHL refers to personnel (whether military or civilian) formally assigned by a party to the conflict, exclusively to the search for, collection and transportation, diagnosis or treatment of the wounded and sick or for prevention of diseases. This includes also personnel exclusively assigned to the administration of medical units or to the operation or administration of medical transports. Such assignments could either be temporary or permanent.[4]

IHL provides several rules on the protection of the medical personnel. The most fundamental of these rules is that medical personnel must be respected and protected. This entails that:

- Medical personnel shall not be attacked, threatened or otherwise subjected to any form of violence.
- Medical personnel shall not be compelled to perform acts contrary to medical ethics nor compelled to refrain from acts required by medical ethics.
- Medical personnel shall not be punished for performing acts required by the rules of medical ethics.
- Medical personnel must not be hindered in performing their medical duties.
- Medical personnel must be provided with all the support and assistance they may require to perform their humanitarian functions.

5. Refer to the chapter on emblems below for further clarification..
6. Article 8(f)& (g) Additional Protocol I to the Geneva Conventions..

Note that, not every doctor or nurse enjoy the special protection under IHL, but only those assigned by a party to a conflict to provide medical care to the wounded and sick. However, all medical personnel performing medical duties regardless of whether or not being assigned by a party to the conflict enjoy protection against attacks as civilians, as long as they do not directly take part in hostilities. The important difference therefore is that only medical personnel who are assigned by a party to the conflict can display the distinctive emblems.[5]

Since the duty to respect and protect medical personnel is not a personal privilege but a derivative of the protection afforded to the wounded and sick, it therefore goes without saying that medical personnel would lose their special protection under IHL when they commit, outside of their humanitarian function, acts that are harmful to the enemy. Such acts could typically include engaging in hostile acts like taking a direct part in hostilities. For example, if medical teams are incorporated into combat units and they bear arms and fight on behalf of a party, they lose this special protection.

However, engaging in acts like: mere caring for enemy wounded and sick military personnel or the carrying of light weapons for personal protection or for protection of patients, being escorted by military personnel, or retaining patients' small arms and ammunition before handing them over to the authorities, cannot be categorized as engaging in hostile acts and thus does not result in the loss of protection.

PROTECTION OF MEDICAL UNITS AND TRANSPORTS

In safeguarding the medical mission for the benefit of the wounded and sick, it is important that the medical units and transport benefit of the same protection as medical personnel. Therefore, IHL provides special protection for medical units and transports as well as rules to ensure ease and accessibility in the delivery of health care.

Medical units under IHL refer to all establishments and other units, whether military or civilian, fixed or mobile, permanent or temporary that are organized for medical purposes and are exclusively assigned to such purposes by a part to the conflict. This includes for example, hospitals, first aid clinics, blood transfusion centers, medical depots, medical and pharmaceutical stores of each units etc.

5. Refer to the chapter on emblems below for further clarification..
6. Article 8(f)& (g) Additional Protocol I to the Geneva Conventions..

Medical transports under IHL refer to any means of transportation, whether military or civilian, permanent or temporary, assigned exclusively to medical transportation under the control of a competent authority of a party to the conflict. This includes means of transportation by land, water or air, such as, ambulances, hospital ships, medical aircrafts etc.[6] These means of transportation must be exclusively assigned to the conveyance of the wounded and sick, medical personnel, medical equipment or medical supplies.

Like the special protection afforded to medical personnel the special protection for medical units and transports does not automatically apply to any private clinic, but only to the units and transports assigned to medical duties by a party to the conflict. However, other medical units and transports enjoy protection from attacks under IHL as civilian objects, as long as they are not used to carry out acts channeled towards taking part in hostilities. The important difference therefore is that only medical units and transports that are assigned by a party to the conflict can display the distinctive emblems.

IHL provides several rules on the protection of the medical units and transports. The rules on the protection of medical units and transports are similar and as such can be treated together. The most fundamental of the rules is that medical units and transports must be respected and protected. This entails that:

- Medical units and transports may not be attacked nor subjected to any form of violence.
- Medical units and transports may not be arbitrarily hindered/impeded in the discharge of their humanitarian duties.
- Medical units and transports may not be diverted from their exclusive medical purpose.
- Medical units and transports must be actively assisted and supported to carry out their humanitarian functions.
- Medical units and transports may under no circumstances be used to shield military objectives from attack, or to launch attacks.

As with medical personnel, medical units and transports can lose their protection if they are used to commit acts harmful to the enemy. Such acts could, for example, include using medical units or transports:

- to shelter able-bodied combatants
- to store arms or ammunition
- as military observation posts
- as shields for military action
- to transport healthy troops, arms or munitions
- to collect or transmit military intelligence

However, the mere fact that personnel of the unit or transport are armed with light individual weapons for their self- defense or for the protection of patients or that the unit is guarded by an armed escort or that members of the armed forces or other combatants are in the unit for medical reasons do not amount to an act outside of their humanitarian function and as such would not result in the loss of protection.

INTERNATIONAL HUMAN RIGHTS LAW (IHRL)

The right to the highest attainable standard of health care is a fundamental part of the array of human rights and of our understanding of a life in dignity. This right is entrenched in most human rights treaties, including the Universal Declaration of Human Rights 1948 (UDHR) which prioritizes health as part of the right to an adequate standard of living.

These rights are applicable to every human. Therefore, both the wounded and sick as well as health care personnel, have a right to the highest attainable standard of physical and mental health, right to access health care and be treated on a non-discriminatory basis, whatever their nationality, race, ethnicity, gender, belief and religion. At a minimum, the Government should provide essential primary health care and ensure the right of access to health facilities, goods and services.[7]

In addition to the right to health, there are several general human rights that contribute to the protection of the medical mission. These

5. This right is today also protected by other international and regional treaties, see notably Arts. 2 and 16 of the African Charter on Human and Peoples' Rights; and Arts. 12(1)(2)(d) and 2(2) of the International Covenant on Economic Social and Cultural Rights (ICESCR).

rights do not offer special protection to medical personnel, nor to the wounded and sick, but they provide general protection against abuse and violence, available to any human being. These include:

- Right to life and integrity of the person.[8]
- Right to safe and healthy work conditions.[9]
- Prohibition of torture and ill-treatment.[10]
- Prohibition of discrimination.[11]
- Prohibition of arbitrary arrest and detention and fair trial.[12]
- Freedom of movement.[13]

Note that these rights are, in principle, applicable at all times, including armed conflict and other emergencies. On the other hand, international humanitarian law, applies only in situations of armed conflict.

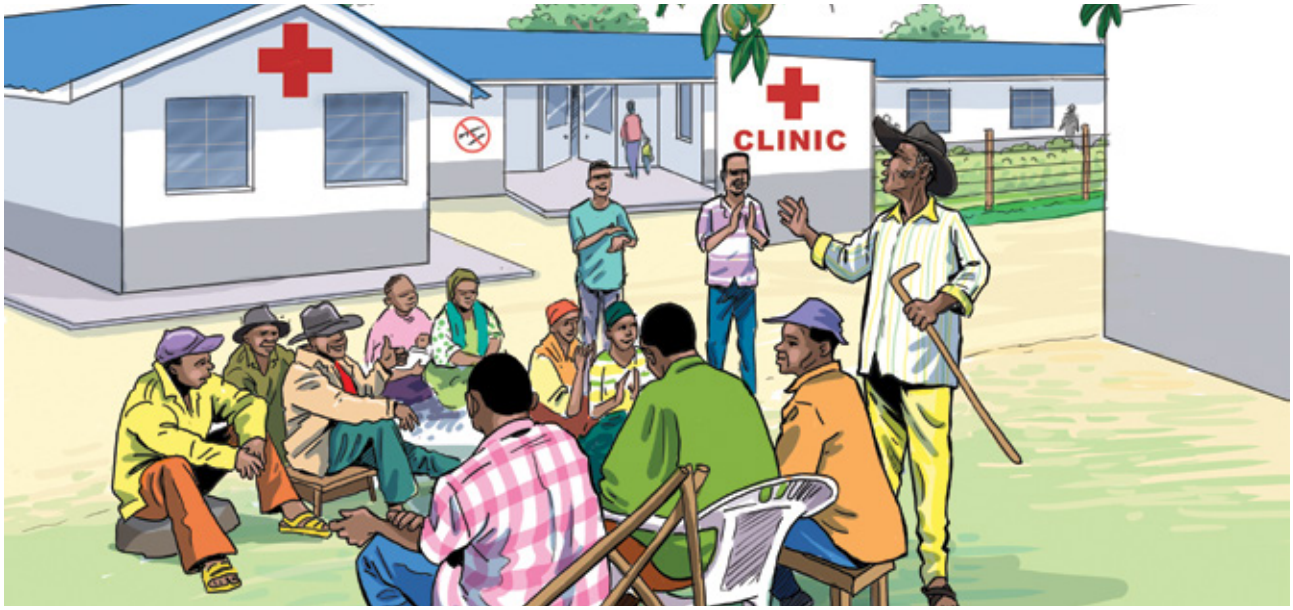
DOMESTIC LAWS

Domestic laws are internal laws enacted within a State. They mainly include national legal frameworks that protect health care and they apply in all contexts (peace time, armed conflict and other emergencies.)

ACCESS TO HEALTHCARE

Different domestic laws protect access of wounded and sick to medical care. The Nigerian Constitution of 1999, for instance, imposes an obligation on the government to direct its policies towards ensuring that "there are adequate medical and health facilities for all persons."[14]

There are also several laws that aim to ensure that the wounded and sick actually receive treatment. Importantly, the National Health Act 2014 (NHA) prohibits medical personnel from refusing to provide emergency health care. Failure to comply with this prohibition is a criminal offence for which medical personnel can be sanctioned.[15] This prohibition is also reiterated in the Compulsory Treatment and Care for Victims of Gunshots Act 2017 (CTCVG) applicable specifically to victims of gunshot wounds. More specifically, this Act guarantees the right to immediate, adequate and compulsory medical treatment for victims of gunshot wounds without any restrictions whatsoever. The Act also creates an obligation to everyone to provide necessary assistance to any gunshot victims to access immediate healthcare. Failure to comply is a criminal offence which is sanctioned under the Act.[16]



8. Art. 3 UDHR; Art. 4 African Charter, Art. 6 International Covenant on Civil and Political Rights (ICCPR).
9. Art. 23 UDHR; Art. 7(b) ICESCR; Art.15 African Charter.
10. Art.5 UDHR; Art.7 ICCPR; Art. 5 African Charter; United Nations Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment.
11. African Charter.
12. Art. 9 UDHR; Art. 9 ICCPR; Art. 6 African Charter.
13. Art. 13 UDHR; Art. 12 ICCPR; Art. 12 African Charter.
14. Section 17 (3)(d) of the Constitution of the Federal Republic of Nigeria of 1999 (as amended).
15. Section 20 of the NHA.
16. Sections 1 & 2 of the Compulsory Treatment and Care for Victims of Gunshots Act 2017.

PROTECTION OF THE WOUNDED AND SICK

Nigerian domestic laws also provide for several layers of protection for the wounded and sick. The above-mentioned human rights, including those aimed at protecting human life and the physical integrity of everyone, are also guaranteed by domestic law, notably the Constitution. Under this framework, deliberately withdrawing or delaying health care to the wounded and sick in life-threatening circumstances violates their right to life.[17] Killings or assaults of persons are furthermore criminalized in the Criminal and Penal Codes.[18]

Furthermore, the National Emergency Management (Establishment etc.) Act, 1999, imposes an obligation on the agency to coordinate and facilitate assistance to sick/wounded in disasters/emergencies.[19]

An important aspect of protection of the wounded and sick is also the protection of the doctor-patient confidentiality. This matter is addressed in the National Health Act 2014 which guarantees the confidentiality of medical information except:

- Consent of the patient in writing
- Disclosure required by law or court order
- At the request of parent/guardian of child or person who is unable to give consent
- When non-disclosure could lead to a serious threat to public health.[20]

PROTECTION OF MEDICAL PERSONNEL

As with international law, several domestic instruments provide protection of the medical personnel. As mentioned above, medical personnel can of course also avail themselves of the general protection afforded by human rights under the Constitution and the protection of life and physical integrity in the Criminal and Penal Codes. In addition, under both codes, the willful destruction of buildings, including medical facilities such as hospitals or health clinics, amounts to a criminal offence.[21]

17. Section 33 of the Nigerian Constitution.
18. See Sections 252, 253 and 306 of the Criminal Code; Sections 220 and 264 of the Penal Code.
19. Section 16 of NEMA.
20. Section 26 (1) & (2) of the National Health Act.
21. Section 443 Criminal Code Act and Section 336 Penal Code.

Additionally, the 1999 Nigerian Constitution imposes an obligation on the government to direct its policies towards ensuring that "the health, safety and welfare of all persons in employment are safeguarded and not endangered or abused."[22] This provision applies also to health-care personnel.

The National Health Act adds further details to this general rule, by providing that health establishments in Nigeria "shall implement measures to minimize injury or damage to the person and property of health care personnel working at the establishment."[23]

REPORTING REQUIREMENTS

Alongside the protection granted to medical personnel are concomitant obligations which are incidental to the enjoyment of some of these rights. For instance, certain laws provide reporting obligations for medical personnel, failure to comply might naturally result in the deprivation of other rights such as the right to liberty when such persons are being sanctioned by reason of their failure to adhere to the laws. Having said, a case in point are the provisions relating to the treatment of gunshot wounded victims.

In the past, gunshot victims in Nigeria have struggled to receive prompt medical attention in either government or private healthcare centres. On top of a financially strapped medical system, the erroneous perception among health-care personnel that gunshot wounds must be reported to the police before giving any medical attention has prevented the wounded from receiving timely, life-saving care. As a result, lives have been lost, needlessly.

The laws on treating gunshot victims in Nigeria are very specific. The 1984 Robbery and Firearms (Special Provisions) Act states: "It shall be the duty of any person, hospital or clinic that admits, treats or administers any drug to any person suspected of having bullet wounds to immediately report the matter to the police." The Act further states: "It shall be an offence punishable under this Act for any person to knowingly house, shelter, or give quarters to any person who has committed an offence under Section 1(2) of this Act." The Act does not prevent health-care workers from treating gunshot victims. But it makes it an offence if such cases in a hospital or clinic are not reported.

These constraints posed a major challenge for hospitals and clinics. Health workers were reluctant to provide life-saving care and found themselves in a difficult legal position. In many cases, doctors were questioned and even arrested for doing their duty and treating gunshot victims. To shield themselves from interference by law enforcement officials, health-care workers felt compelled to request police clearance before providing any treatment. At the same time, by reporting gunshot cases to the police, health-care workers could be exposed to retaliation from patients and their relatives for denunciation.

In 2009, a well-known journalist bled to death after armed men shot him at his home. Following allegations by a Lagos hospital that it had been prevented from treating the victim, which led to his death, the inspector general of police issued a public statement denying that police had ever restrained doctors from attending to those in need of attention following accidents and shootings in the country. In the same vein, in 2015, the Inspector General of police restated this position, calling on members of the public, including medical personnel, to attend to gunshot victims before informing the police.

The police notice on treating gunshot wounds brought the issue to the attention of the Vice President, the Senate President and the Federal Minister of Health at the time. This led to the speedy enactment of the Compulsory Treatment and Care for Victims of Gunshots Act, 2017.

In summary, the Act:

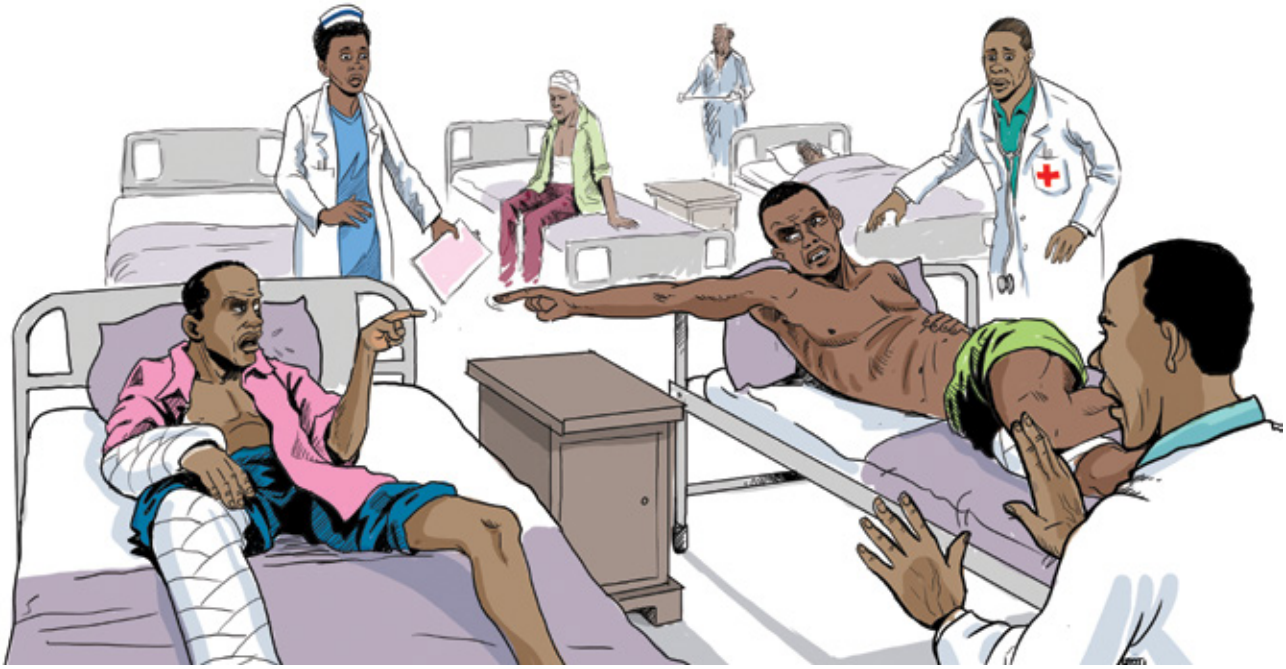
- establishes the right of every person with a gunshot wound to be treated compulsorily – to guarantee access to medical services, immediate and adequate treatment with or without a monetary deposit.
- provides that security agents have a duty to assist victims of gunshot wounds.
- allows for a two-hour window before medical practitioners must notify the police of a gunshot wound. This window is meant to remind practitioners that they

22. Section 17 (3)(c) of the Constitution.
23. Section 21(2)(a) of the National Health Act 2014.

do not need permission from the police to treat a victim. It also allows practitioners to treat victims immediately before having to notify the police.

- forbids any form of inhuman/degrading treatment of victims of gunshots.

The Act also sets out penalties for offences such as obstructing access or denying healthcare services. Security operatives who obstruct access to health care or health-care workers who reject gunshot victims can be held criminally liable.



MEDICAL ETHICS

The application of the above laws in armed conflicts or other emergencies does not thereby exclude the application of medical ethics. The body saddled with the responsibilities of maintaining the code of medical ethics in Nigeria is the Medical and Dental Council of Nigeria[24].

PROTECTION OF THE WOUNDED AND SICK

- The code of medical ethics in Nigeria prohibits the application of torture (physical, biological or psychological) by medical practitioners on any citizen irrespective of the offence the victim of such a procedure is suspected, accused or guilty of and whatever the victim's beliefs or motives and in all situations including armed conflict and civil strife.
- All communications between the patient and the practitioner made during treatment shall be treated in strict confidence by the practitioner and shall not be divulged unless compelled by law or overriding common good or with the consent of the patient.
- A physician shall give emergency care as a humanitarian duty without discrimination.
- In embarking on withdrawal of services under any circumstance, a doctor must conduct himself in such a manner as to avoid suffering and loss of life for the helpless patients, such as children and accident victims, who had not in any way contributed to the dissatisfaction which has made the withdrawal of service necessary.
- A physician shall observe the principles of the 'Declaration of Geneva' approved by the World Medical Association. In particular:
  "I will not permit considerations of age, disease or disability, creed, ethnic origin, gender, nationality, political affiliation, race, sexual orientation, social standing or any other factor to intervene between my duty and my patient" (Geneva declaration).

  "I will not use my medical knowledge to violate human rights and civil liberties, even when under threat" (Geneva declaration).

24. Section 1; Sub-section 2(c), of the Medical and Dental Practitioners Act [CAP 221], Laws of the Federal Republic of Nigeria 1990 (Decree No. 23 of 1988).

PROTECTION OF MEDICAL PERSONNEL

- Registered practitioners are advised to protect their professional practice by regularly taking professional indemnity.
- Practitioners shall have absolute discretion and authority, free from unnecessary non-medical interference, in determining when to give their services, the nature of care to be given to a patient under their care and must accept responsibility for their actions.
- Practitioners should be at liberty to take prompt steps to protect themselves from unscrupulous and dubious patients who may be out to deceive or manipulate them.
- It would be permissible for a doctor to withdraw his services in pursuit of his rights under the Labor Laws of the Federal Republic of Nigeria, provided that any doctor wishing to take that course of action must have made satisfactory arrangements for the continuing care of his patients and must have given adequate notice of his intention to these patients and to the hospital authorities.

LEGAL FRAMEWORK

	WHAT	SCOPE OF APPLICATION	BOUND BY LAW
International Humanitarian Law	Protection of victims Methods of warefare	• (Non) International armed conflict	• States • Armed groups • Individuals (incl. HC personnel)
International Human Rights Law	Protecting the lives and dignity of human beings	• (Non) International armed conflict • Peace time (incl. other emergencies)	• States
Domestic Law	Law of a sovereign state applicable to its territory	• (Non) International armed conflict • Peace time (incl. other emergencies)	• Individuals
Medical Ethics	Set of best practices and moral duties guidance on dilemmas	• (Non) International armed conflict • Peace time (incl. other emergencies)	• Medical personnel

Summary of the legal framework and scope of application.

MODULE THREE

RESPONSIBILITIES AND RIGHTS OF HEALTH-CARE WORKERS

RESPONSIBILITIES OF HEALTH CARE WORKERS

The responsibilities of health-care personnel working in armed conflicts or other emergencies, are based on the principle of humanity and drawn mainly from medical ethics, international humanitarian law and international human rights law. While most will agree that these responsibilities are dictated by common sense, not everybody may have the same understanding of what special responsibilities and rights health-care workers have in situations of armed conflict or other emergencies.

Some responsibilities are absolute: "you must" fulfil them. Others may be difficult to fulfil under certain circumstances: hence, "you should" if possible.

YOU MUST

You must in all circumstances:

- provide healthcare services as priority without recourse to any other factor such as financial capacity, reports etc;
- not take undue risks while discharging your duties;
- ensure that your practices are compatible with humanitarian law, human rights law and medical ethics;
- treat the wounded and sick humanely;
- respect every wounded or sick person's wishes, confidence and dignity;
- not abandon the wounded and sick;
- not take part in any act of hostility if you want to be protected as medical personnel under humanitarian law;
- not pose an immediate threat to the lives or the physical integrity of others if you want to be protected from the use of force under human rights law;
- remind authorities of their obligation to search for and collect the wounded and sick and to ensure their access to health care without discrimination on grounds other than medical condition;
- advocate and provide effective and impartial care for the wounded and sick without any adverse distinction;
- shield the wounded and sick from public curiosity and media attention;
- not exploit the situation or the vulnerability of the wounded and sick for personal gain;
- not undertake any kind of operation or experimentation on the wounded and sick without their genuine and valid consent or as such that is pertinent for the health of the wounded or sick;
- give special consideration to the greater vulnerability of women, children, the elderly and people with disabilities, and to their specific health-care needs;
- give special consideration to the specific health-care needs of victims of sexual violence;
- respect the right of a family to know the fate and whereabouts of a missing relative;
- be aware that, during armed conflicts or other emergencies, health care becomes increasingly susceptible to unscrupulous practices and the distribution of poor quality / counterfeit materials and medicines;
- encourage authorities to recognize their obligations under humanitarian law and other pertinent bodies of international law with respect to protecting healthcare personnel and infrastructure in armed conflicts and other emergencies;
- do everything within your power to prevent reprisals against the wounded and sick or against health-care workers and facilities;

- refuse to obey orders that are unlawful or that compel you to act contrary to health-care ethics;
- be aware of your legal obligations to report to authorities the outbreak of any notifiable disease or condition.

YOU SHOULD IF POSSIBLE

There are other situations where the provision of healthcare might be compromised, but where dilemmas arise, nevertheless.
You should if possible:

- give careful consideration to any dual loyalties that you may be bound by and discuss them with colleagues and anyone in authority;
- listen to and respect the opinions of colleagues;
- reflect on and try to improve the standards of care appropriate to the situation;
- report the unethical behavior of colleagues to your superiors;
- be identifiable as a health-care provider, and by means of a distinctive emblem if authorized to wear one;
- keep adequate health-care records;
- provide support for restoring and maintaining the provision of civilian health care disrupted by armed conflicts or other emergencies;
- report to the relevant authorities if health-care needs are not being met;
- inform authorities or others responsible about any security incident.

RIGHTS OF HEALTH CARE PERSONNEL

Health-care workers not only have responsibilities in times of armed conflict and other emergencies, but also corresponding rights.

RIGHTS IN ARMED CONFLICT

Health-care personnel have certain special rights when they are working in an armed conflict. These rights include:

- to be respected and protected, as do the wounded and sick you are caring for;
- to demand that the authorities assist you in carrying out your work;
- to demand that the authorities give you access to the wounded and sick;
- not to be punished for discharging your responsibilities in accordance with accepted standards of health care;
- not to be compelled to act in a manner contrary to the law and/or health-care ethics;
- not to be compelled to give information about wounded and sick people beyond what is required by domestic law or in terms of notification of infectious diseases;
- if you are detained, to continue your professional work whenever possible;
- not to be punished for disobeying an illegal or unethical order;
- to carry a light weapon to defend yourself and the wounded and sick in your care.

RIGHTS IN OTHER EMERGENCIES

In other emergencies, health-care workers have the same rights as any other person under the jurisdiction of a State. You benefit from the general protection granted by human rights law.

Like all other individuals under the jurisdiction of a State, you are protected, for instance, from being killed arbitrarily or from being tortured or ill-treated by State security or police forces. In addition, the right of individuals to non-discriminatory access to health care under human rights law implies that State authorities must permit you to treat people in need of health care, assist you in your work and protect you from arbitrary interference with your work. There may also be provisions of domestic law that enhance your legal protection and your ability to bring assistance to the wounded and sick.

MODULE FOUR

THE DISTINCTIVE EMBLEMS OF THE GENEVA CONVENTION

The emblems of the red cross, red crescent and red crystal are universal symbols of hope for people in humanitarian crises. In times of armed conflict, these symbols are internationally recognized symbols of the protection that is due to the armed forces' medical personnel, facilities and vehicles and to civilian medical personnel authorized to bear the emblem when assigned to medical duties by one party to a conflict.

The three emblems are free from any religious, cultural or political connotations.

USE OF THE EMBLEMS

In times of armed conflict, the emblems are a sign of protection which informs the parties to an armed conflict that the people, vehicles or facilities displaying these emblems must be protected at all times and may not be targeted or attacked.

In armed conflict, the following persons and entities may use a protective emblem:

- the medical services or religious personnel of the armed forces;
- the medical personnel of National Societies when placed at the disposal of the medical services of the armed forces and when subject to military laws and regulations;
- civilian medical personnel, hospitals and vehicles, but only with the express authorization of the government and when under its control;
- Staff of the International Committee of the Red Cross or International Federation of Red Cross and Red Crescent Societies.

In situations other than armed conflict, the emblems may primarily be used by the components of the International Red Cross and Red Crescent Movement to signal their association with the Movement. This includes staff and members of National Red Cross and Red Crescent Societies, of the International Committee of the Red Cross, and International Federation of Red Cross and Red Crescent Societies.

It is important to note that you do not have the right to use one of the emblems simply because you are providing health care in an armed conflict or in some other emergency. Contrary

to popular belief, the use of the emblem is very restricted, so as to prevent any misuse that may lead to a dilution of the protective power that the emblem has.

In armed conflict situations, civilian medical personnel and their facilities may use the emblem only when assigned to provide medical services by a party to the conflict and authorized to use the emblem.

In times of peace, the emblem may be used in exceptional circumstances by ambulances and aid stations that provide their services free of charge. Moreover, their use must be regulated under domestic law and they need the express authorization from the National Red Cross or Red Crescent Society.

MISUSE OF THE EMBLEMS

Any misuse of the emblem may diminish their protective value and erode respect for them in times of armed conflict. Different forms of misuse are therefore prohibited under international and domestic law. Why is it important to prevent any misuse of the emblem?

- Misuse of the emblems could jeopardize their protective function during armed conflict because the warring parties and weapon bearers may lose trust in what the emblems stand for.
- Misuse may also hamper or jeopardize the safe access of Red Cross and Red Crescent staff and volunteers to people and communities in need during humanitarian crises

A misuse consists in short in any use made of the emblem which is not in line with the Geneva Conventions and their Additional Protocols or relevant domestic legislation.

Three ways of misuse of the emblem can be distinguished:

- Perfidy: This form of misuse is the most serious. It occurs where the emblem is used during an armed conflict by combatants and military equipment with intent to mislead the adversary and feign a protected status. Killing, injuring or capturing an enemy by resorting to perfidy is prohibited. Perfidy is a particularly reprehensible misuse of the emblem, as it may lead an adversary to abandon respect for protected health-care personnel and facilities altogether.
- Imitation: The use of a sign whose shape and color may be confused with one of the emblems;
- Improper use: The use of an emblem in a way that is inconsistent with the relevant rules of humanitarian law, by unauthorized people or bodies (such as pharmacies, private doctors, or private clinics not authorized to use the emblem)

Imitation

Improper Use

Perfidy

WHAT LAWS AND RULES GOVERN THE DISPLAY OF THE EMBLEMS

The use of the emblems is regulated by the 1949 Geneva Conventions and their Additional Protocols, and by domestic legislation.

In Nigeria, the Geneva Conventions Act 1960 makes it unlawful for any person (other than those contemplated in the Geneva Conventions of 1949) to use the emblems without the authority of the Minister of Defense.[25] It further makes it unlawful to use any design or logo which closely imitates any of the emblems in such a way that it is capable of being mistaken for one of the emblems.[26]

Contravention of both sections makes one liable on summary conviction to a fine and to forfeit any goods upon or in connection with which the emblem, design or wording was used.[27]

The Nigerian Red Cross Society Act 1960 also prohibits the fraudulent use of the red cross emblem and its imitations. Anyone found guilty of this offence is liable on conviction to a fine or to imprisonment for a period not exceeding two years, or to both such fine and imprisonment.[28]

CAN YOU IDENTIFY THE TYPE OF MISUSE IN THE PICTURES BELOW?

25. Section 10 (1) GC Act 1960
26. Section 10 (3) (a)
27. Section 10 (4)
28. Section 8 (a) and (b) NRCS Act 1960

MODULE FIVE

ADDRESSING CHALLENGES OF VIOLENCE ON HEALTH CARE IN ARMED CONFLICTS AND OTHER EMERGENCIES

The Health Care in Danger initiative has brought to light some areas where the move from commitment to meaningful action needs to be made a priority by all concerned. They address a number of aspects relevant to the prevention of violence against health care and to the reduction of the impact of insecurity on the safe access to and delivery of health care.

DEVELOPING AND STRENGTHENING DOMESTIC LEGISLATION

The recommendations in this area aim at helping states reinforce their domestic legislation and comply with their obligations in terms of implementation of the existing international framework protecting health care delivery and services.

- improving legal protection for patients and health personnel and facilities
- ensuring proper use of the distinctive emblems
- providing legal protection for safeguarding medical ethics and confidentiality
- dealing effectively with violations of the rules protecting the provision of health care

INCORPORATING THE PROTECTION OF HEALTH CARE INTO THE OPERATIONAL PRACTICE OF ARMED FORCES AND ARMED GROUPS

This is aimed at minimizing the disruption to health-care services and preserving the right of patients to receive healthcare and of health personnel to provide it safely while safeguarding the legitimate security concerns of fighting forces. Improving the knowledge and practice of armed carriers in the following areas are recommended.

- Check point conduct.
- Ground evacuations
- Search operations in health care facilities
- Military operations in the proximity of a health care facility.

PROMOTING THE RIGHTS AND RESPONSIBILITIES OF HEALTH CARE PERSONNEL AND GENERATING RESPECT AND ADHERENCE TO THE ETHICAL PRINCIPLES OF HEALTH CARE

- the ethical principles of health care
- standards of practice
- the health needs of particularly vulnerable people
- health records and transmission of medical records
- data gathering on violence against health care.

ENSURING THE PREPAREDNESS AND SAFETY OF HEALTH CARE FACILITIES

This area is addressed to governments, hospital managers and other individuals concerned, with a view to helping them prepare for and manage situations that could jeopardize their objective of assisting the sick and wounded and maintaining the health of people affected by armed conflict and other emergencies. They cover a broad range of subjects – facilities, supplies, health-care personnel, and patients

and their relatives – and place a strong emphasis on preparedness and planning to make the delivery of health-care safer.

This includes measures to;

- measures to guide the contingency-planning process;
- measures to ensure the well-being and security of staff, patients and relatives, including through psychosocial support
- measures aimed at increasing the physical security of the facility, through both passive and active measures, while maintaining access and positive perceptions;
- measures to ensure the security of the supply chain for health-care equipment and goods;
- measures to adopt in the event of temporary relocation.

PROMOTING THE INVOLVEMENT OF RELIGIOUS AND COMMUNITY LEADERS TO ENSURE ACCEPTANCE AND ACCESS

These recommendations are mainly for religious and community leaders, who can serve as critical allies in protecting health-care personnel and facilities and medical transport. They can use their position to raise awareness of this issue in their communities, guide perceptions and link the obligation to safeguard health care to relevant religious rules and tradition.

- Religious and community leaders can help their communities understand the crucial role that local and international health-care workers play and the importance their work.
- Religious scholars could emphasize universal values and use sacred texts as a basis for the obligation to protect health-care personnel and facilities and medical transport.
- Religious scholars, community leaders and health-care providers can use existing forums, such as conferences and workshops, to raise awareness of the importance of safeguarding health care and to mobilize their communities and others.
- They can also help enrich IHL awareness-raising events by drawing connections to religious precepts.
- Religious and community leaders can work with the health-care community to locate and publicize the locations of health-care facilities.
- They can also coordinate their communications to mitigate risk and keep health-care personnel safe.

For these reasons, it is important for health-care personnel to maintain dialogue and regular contact with religious leaders always – especially in armed conflict or other emergencies.

INCREASE AWARENESS OF VIOLENCE AGAINST HEALTH CARE AND PUBLIC RESPECT FOR HEALTH CARE WORKERS AND SERVICES

Public campaigns via various communication channel:

- radio
- television
- posters
- social media etc.

ANNEX I

REFERENCES

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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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