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Mitigating Violence Against Health Care: A Tailored Legal Approach

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Wooclap Question

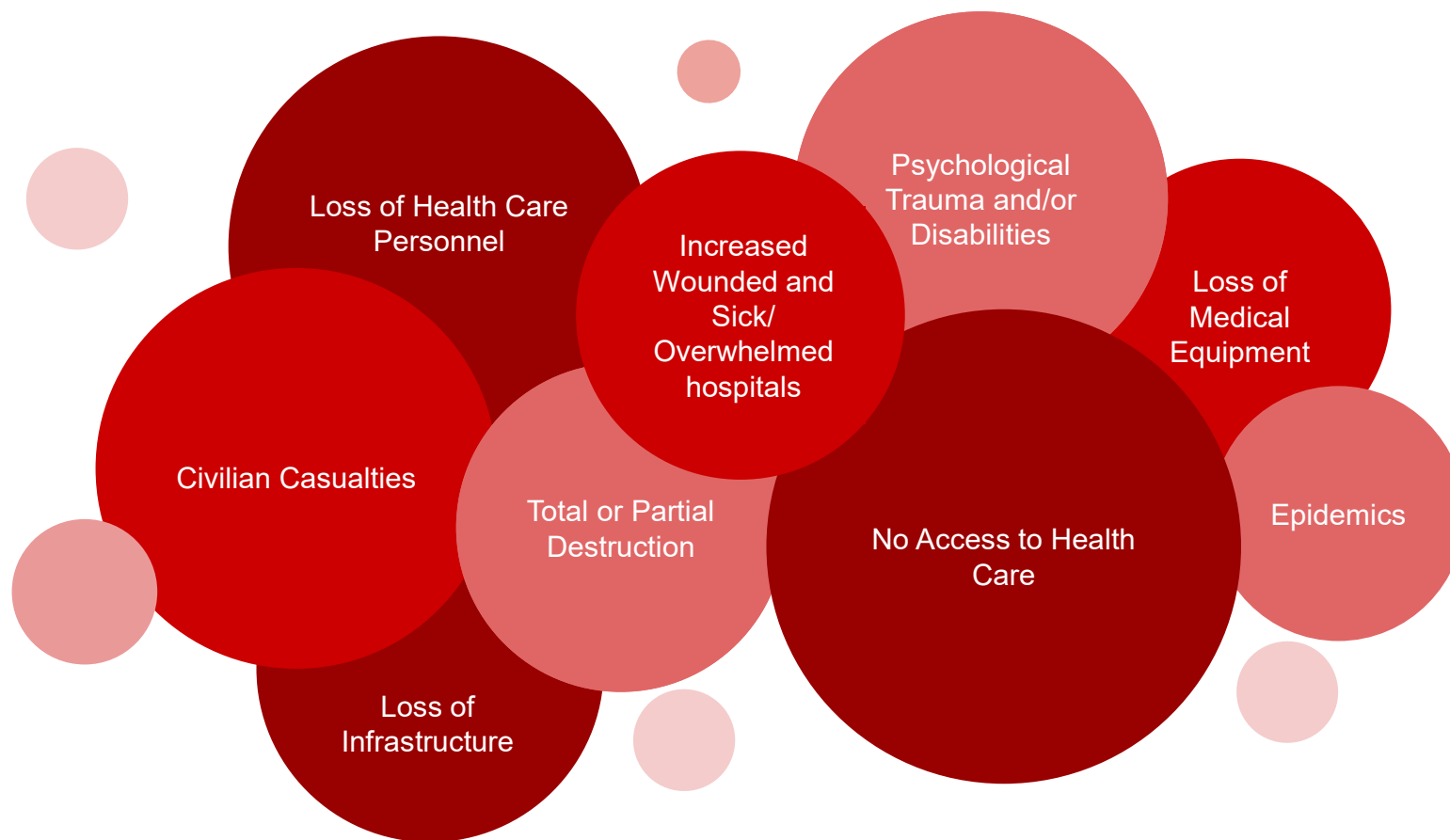
- WooClap Link:

<https://www.wooclap.com/RKDLMR>

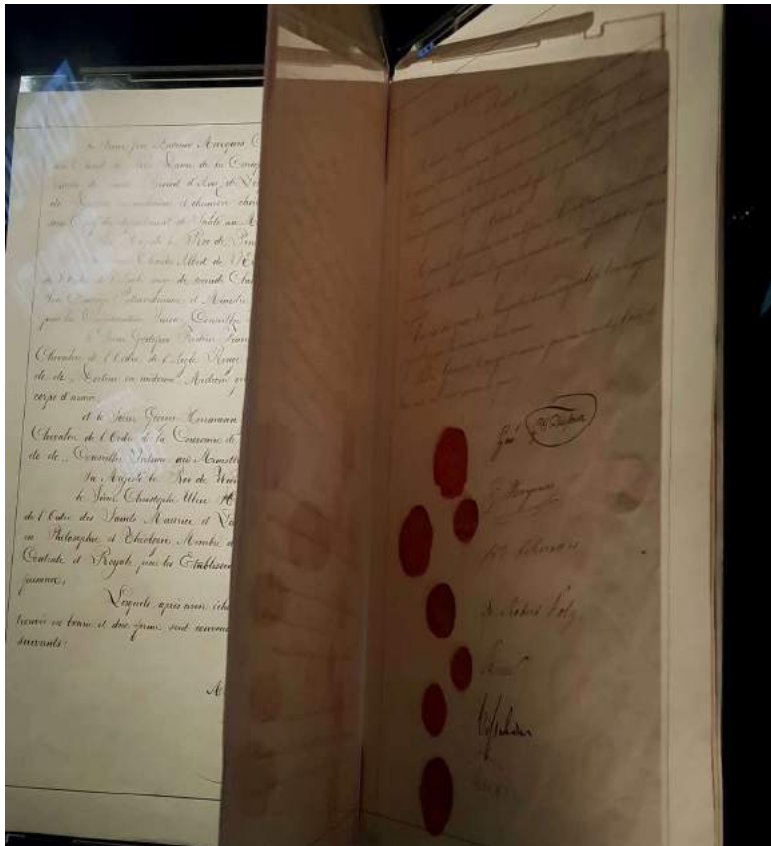


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ONE VIOLATION, MANY POTENTIAL CONSEQUENCES: Direct and Indirect, Long-Term Consequences



Legislative and Policy Measures





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Legislative Checklist

PROTECTING HEALTH CARE FROM VIOLENCE

LEGISLATIVE CHECKLIST

I. INTRODUCTION

To successfully reduce the occurrence of incidents of violence against health care and mitigate their impact, adequate rules in domestic legislation and regulations are required. This document is designed to serve as a practical tool to help the practitioners concerned assess:

- whether the domestic normative framework complies with international obligations and some of the main operational recommendations related to the protection of health-care delivery
- in those cases where gaps are identified, what the appropriate preventive or corrective measures should be.

The document presents a list of questions (a checklist or compatibility study) that cover some of the main challenges related to the protection of health care during armed conflict and other emergencies.¹ (In some cases, the solutions proposed may also be applicable in peacetime.) The objective of this checklist is to provide practitioners with a consolidated overview of their domestic normative framework so that they may quickly spot and address potential gaps or inconsistencies in either international obligations or existing operational and policy recommendations.

The variety of and discrepancies between legal systems around the world necessitate that both analysing domestic normative frameworks and proposing ways to address related issues be carried out on a case-by-case basis. What might be appropriate for one country might not be for other countries. It is therefore up to the practitioner to decide how to fine-tune the use of this checklist and, afterwards, if and how to propose preventive or corrective measures.

Addressing violence against health care in times of armed conflict or other emergencies requires creative solutions that derive from tailored, multidisciplinary approaches. Consequently, no matter how practical or comprehensive this checklist may be, its very nature implies that it must be read and used together with other Health Care in Danger (HCD) publications² and any other relevant material that will help inform how to set up an effective multidisciplinary approach to the issue at hand. In some cases, practitioners might also find it relevant to add their own questions to the checklist whenever the practical challenges that they encounter in their location require assessment of other areas or aspects of the law than those covered in this document. This checklist should be seen as a practical and flexible tool and certainly should not be used as an exhaustive, stand-alone document.

¹ The term "other emergencies" is used herein to refer to situations that fall short of the threshold for armed conflict but during which security measures or incidents related to security can result in serious consequences for people in need of effective and impartial health care, e.g. death, aggravation of injuries, worsening of illnesses or diseases, or obstruction of preventive health-care programmes. These measures or incidents may take a number of forms: violence against people in need of health care; violence against health-care personnel and facilities or medical vehicles; entry into health-care facilities by armed forces or security forces with the intent or effect of interrupting the delivery of health-care services; arbitrary denials of or delays in the passage of medical vehicles at checkpoints; or simply the general security situation prevailing in an area affected by an emergency. In these circumstances, and depending on the urgency of humanitarian needs, health-care personnel – including but not limited to staff or volunteers from the International Red Cross and Red Crescent Movement – may be called upon to prevent and alleviate human suffering. See the responsibilities of health-care personnel working in armed conflict and other emergencies: <https://healthincardanger.org/wp-content/uploads/2019/02/ICRC-2019-4104-the-responsibilities-health-care-personnel.pdf>, p 12.

² See: <https://healthincardanger.org/resource-centre/>.

The Structure of the Checklist

- Introduction
- Methodology
- The 2014 Brussels Report and the Guidance Tool
- Main Challenges related to the Protection of health Care in Armed Conflicts and Other Emergencies
- Preliminary Questions
- Substantive Questions

Section IV: Main Challenges

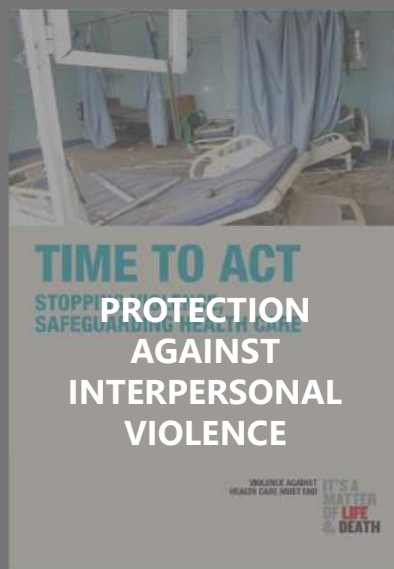
Legal and Regulatory Protection



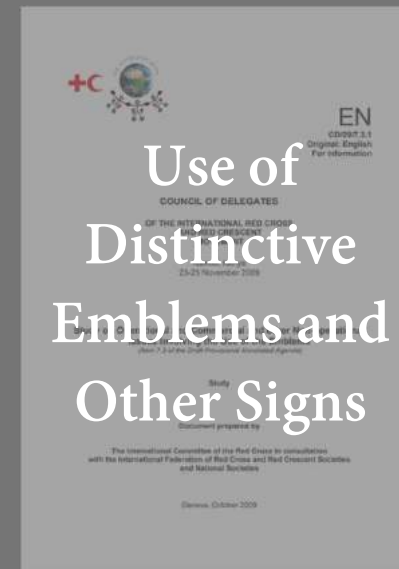
HEALTH CARE IN DANGER THE RESPONSIBILITIES OF HEALTH-CARE PERSONNEL WORKING IN ARMED CONFLICTS AND OTHER EMERGENCIES PROTECTION OF MEDICAL ETHICS



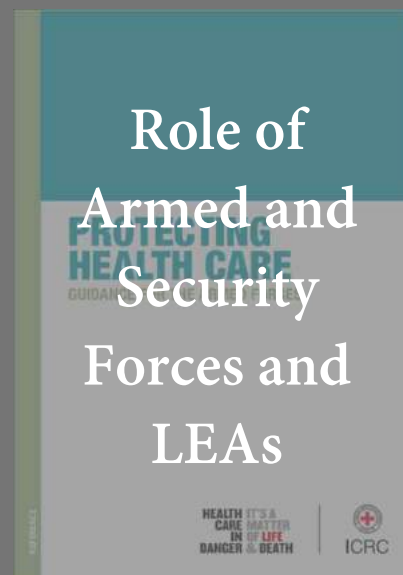
TIME TO ACT STOPPING VIOLENCE SAFEGUARDING HEALTH CARE PROTECTION AGAINST INTERPERSONAL VIOLENCE



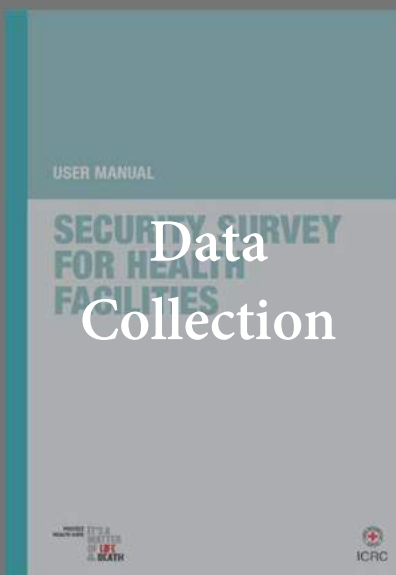
Use of Distinctive Emblems and Other Signs



Role of Armed and Security Forces and LEAs



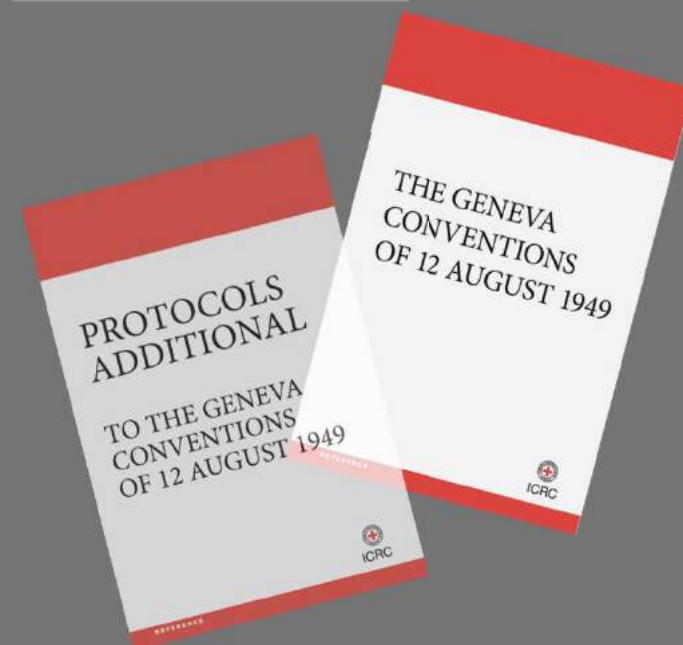
Data Collection



Coordination Mechanism



PROTOCOLS ADDITIONAL TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949



THE GENEVA CONVENTIONS OF 12 AUGUST 1949





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Section V: Preliminary Questions

Right to Health

Definitions

Existence of Domestic Legislation

Existence of National Professional Associations

Integration into Military Manuals

Section VI: Substantive Questions

- Legal and Regulatory Measures:
 - Medical Ethics
 - Interpersonal Violence
 - Use of Distinctive Emblems
 - Criminal Sanctions
 - Roles of Security Forces and LEAs in protection
 - Data Collection
 - Coordination Mechanism
-



Points to Consider



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PROTECTING HEALTH CARE

KEY RECOMMENDATIONS

PROTECT
HEALTH CARE
IT'S A
MATTER
OF LIFE
& DEATH



REPORT

ARMED CONFLICTS IN

RESPECTING AND PROTECTING HEALTH CARE IN ARMED CONFLICTS AND IN SITUATIONS NOT COVERED BY INTERNATIONAL HUMANITARIAN LAW



International humanitarian law (IHL) – described the “law of war” or the “law of armed conflict” – was not developed to deal with the humanitarian impact of armed conflict. It protects those who are not, or are no longer, taking part in the fighting, and sets limits on the means and methods of warfare. IHL is a universal set of rules, it consists of international treaty and customary law that are specific to armed conflict. In order to ensure humanitarian access during directly affected conflict, both international and non-international, the 1949 Geneva Conventions and their Additional Protocols of 1977 and 2005 are the core treaties. The Geneva Conventions have been accepted by all States, and acceptance for the Additional Protocols is growing. These fundamental instruments are supplemented by various other treaties. Increasingly, parties to armed conflicts are using a host of legal, but it is a mixed one. Additional efforts are required to implement the rules contained in these instruments – to put them into effect.



HEALTH CARE IN DANGER MEETING THE CHALLENGES

PROTECT
HEALTH CARE
IT'S A
MATTER
OF LIFE
& DEATH



REPORT

XIX THE IMPLEMENTATION OF RULES PROTECTING THE PROVISION OF HEALTH CARE IN ARMED CONFLICTS AND OTHER EMERGENCIES: A GUIDANCE TOOL



DOMESTIC NORMATIVE FRAMEWORKS FOR THE PROTECTION OF HEALTH CARE

HEALTH CARE
IT'S A
MATTER
OF LIFE
& DEATH
DANGER





Protecting Healthcare through Policy: The Afghan Example

Ioanna Voudouri, Legal Advisor
22 June 2021

What is the issue?

- Safe and timely access to medical care under risk
- Targeting of medical facilities and personnel - sometimes following misuse
- Impeded access to medical care
 - Risk for medical providers
- Delayed or impossible medical evacuations
- Exposure to residual risks, e.g. weapon contamination



IHL

Medical personnel, units and transport exclusively assigned to medical duties must be respected and protected in all circumstances.

Punishing a person for performing medical duties compatible with medical ethics or compelling a person engaged in medical activities to perform acts contrary to medical ethics is prohibited.

Attacks directed against medical personnel and objects displaying the distinctive emblems are prohibited.

The wounded and sick must receive, the best possible medical care and with the least possible delay – using only medical criteria. Whenever circumstances permit, parties to the conflict must try to care for the wounded and sick.

How does Afghan Law protect?

No specific legislation, but provisions in various national laws.

E.g. 2009 Public Health Law

2008 Forensics Law

Constitution

Penal Code

But: Afghan law and military doctrine lack provisions on protection of medical personnel, units and transport, and an MoD Policy was identified as one way to partially fill this lacuna.



The Policy of the Ministry of Defence

The ICRC offered technical support to develop an MoD policy on protection of the medical mission.

ICRC prepared:

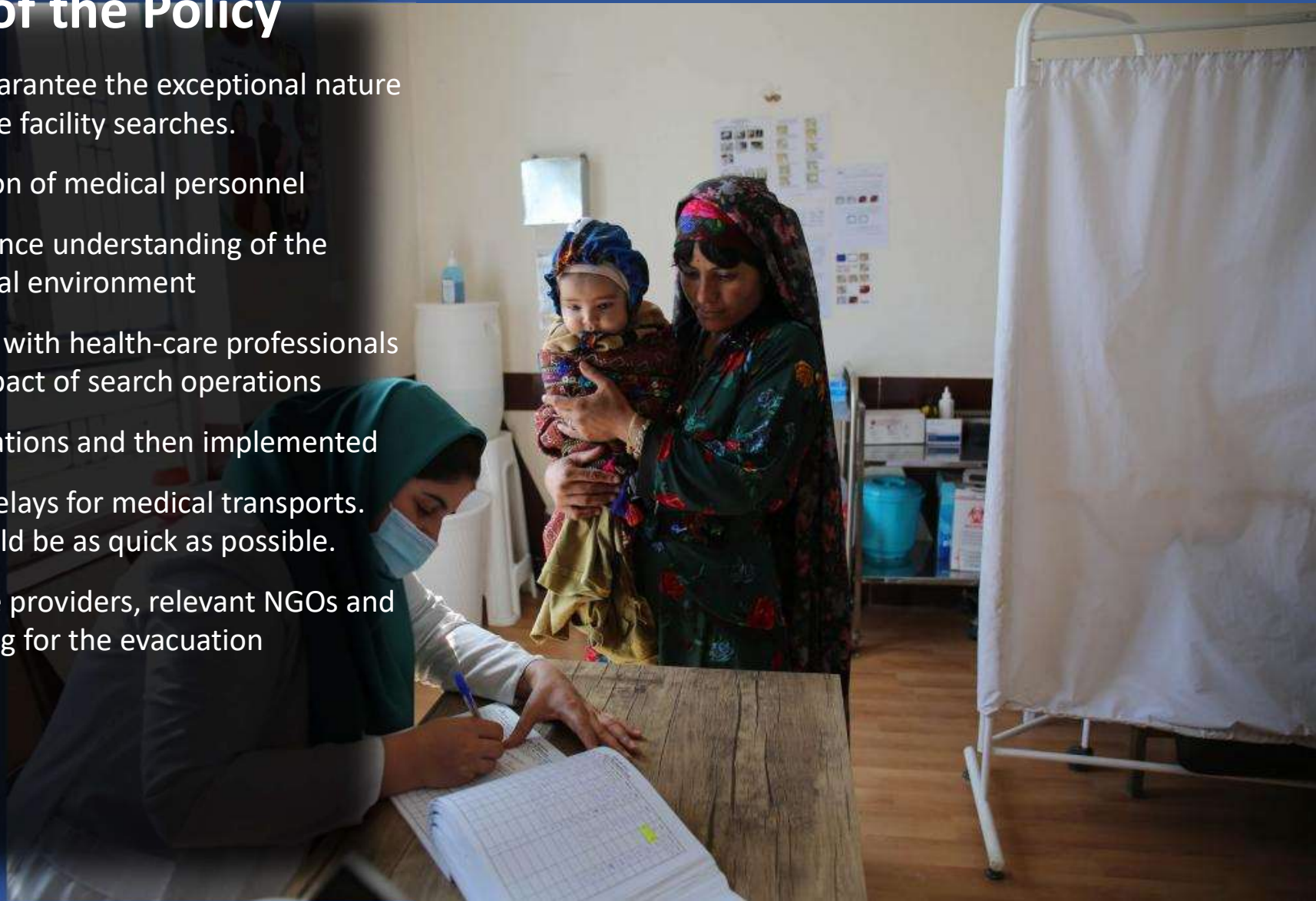
- A framework document that was shared with the Legal Directorate.
- A document with practical measures that MoD can draw inspiration from when developing the policy.

Current state: the policy needs to be finalized and validated by the Minister of Defense.



Content of the Policy

- o Specific measures to guarantee the exceptional nature of health-care facility searches.
 - o Explicit protection of medical personnel
 - o Measures to enhance understanding of the operational environment
- o Coordination measures with health-care professionals to minimize the impact of search operations
- o Training prior to operations and then implemented
 - o Avoid unnecessary delays for medical transports. Security checks should be as quick as possible.
- o Mapping of health-care providers, relevant NGOs and others providing for the evacuation



Added Value and Way Forward



- Comprehensive definitions
- Clarifications in cases of misunderstanding of protection afforded to medical activities
- Tailored training
- ...More ministries? Other security and defense forces?



SAFEGUARDING HEALTH CARE THROUGH LEGAL INTERVENTIONS THE KHYBER PAKHTUNKHWA EXPERIENCE

DR. FAROOQ JAMIL

SPECIAL SECRETARY HEALTH, KHYBER PAKHTUNKHWA, PAKISTAN



BACKGROUND



- Violence against health-care personnel is a global phenomenon
- Almost 66% of healthcare workers had experienced and/or witnessed some kind of violence in one year in Karachi
- Violence against health care frequently reported in media reports and other sources



Available at: <https://pubmed.ncbi.nlm.nih.gov/29449119/>



Two major gaps



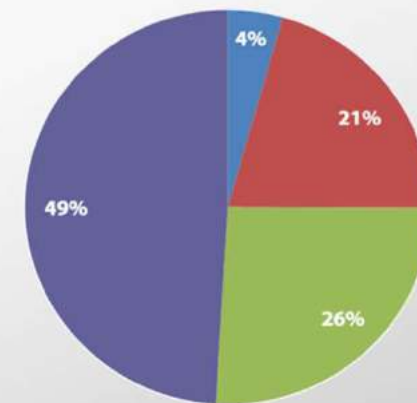
A systematic analysis of the problem to guide policies and decisions

A review of the legal framework to identify the existing legal protections for health care & gaps



Baseline Study in Peshawar

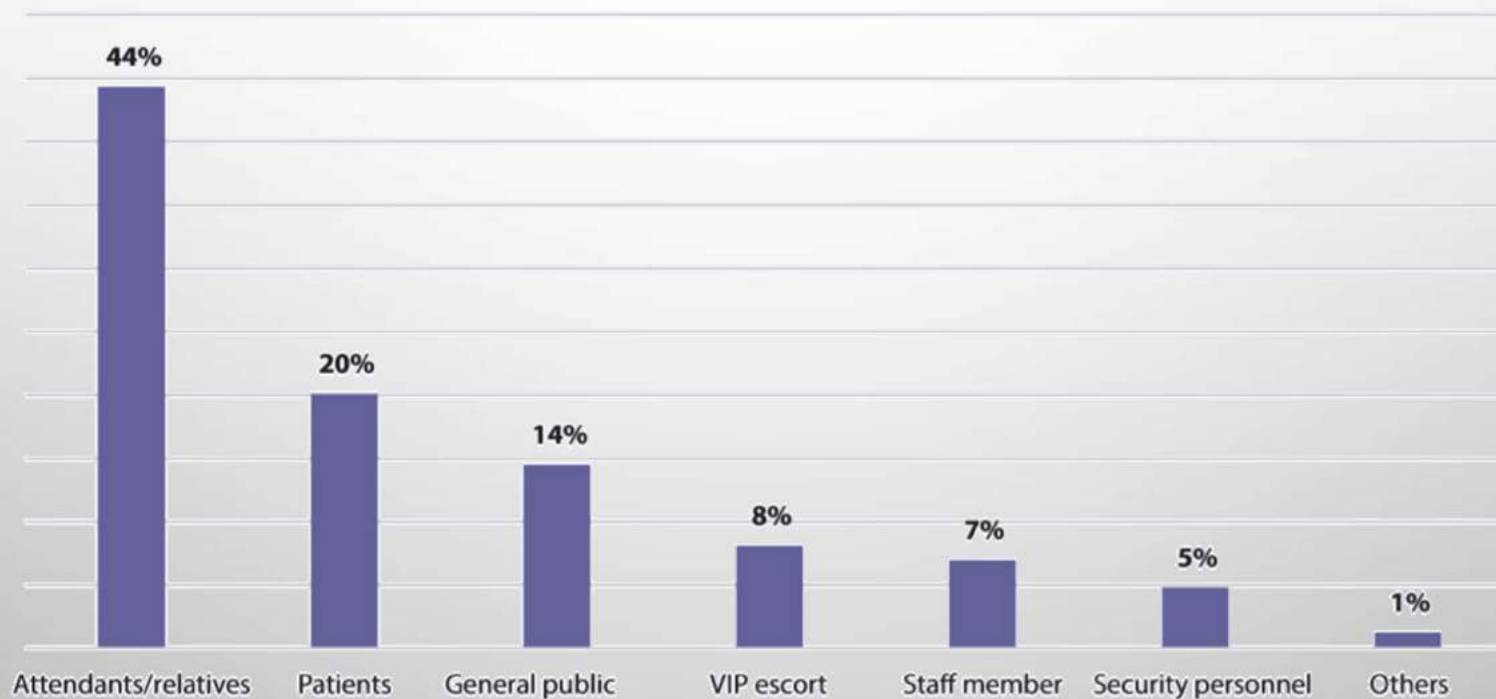
- The department of health (KP) joined hands with KMU and the ICRC to conduct a baseline study in Peshawar
- Explore the magnitude, determinants and dynamics of violence against health care



■ Experienced ■ Witnessed ■ Witnessed and Experienced ■ Neither



Perpetrators of violence



Available at: <https://bmcpublihealth.biomedcentral.com/articles/10.1186/s12889-021-10243-8>



Review Of The Legal Framework: The Process

- A review of the legal framework of KP was jointly conducted by the DoH and the ICRC
- Desk review and semi-structured interviews and consultations with key stakeholders

Objectives

- To understand the situation on ground.
- To determine the factors that contribute towards violence against health care,
- To provide legal solutions to those factors,
- Geared towards mitigating, de-escalating and preventing violence against health care.



FINDINGS



The legal regime applicable to KP for preventing violence against health care may be divided into 5 broad themes:

- Preparedness
- Training of health care personnel
- Mechanism to monitor violence against health care
- Respect for health care services
- Protection of health care





RECOMMENDATIONS

- To create specific offences of 'violence against health care' including obstruction of services.
- Provide protection to all categories of HCPs, health facilities and medical transport.
- Mechanism for monitoring violence against health care
- Lay down responsibilities of HCPs and mandate disciplinary action for violation.
- Adoption of a protective symbol to be used uniformly by all health care services.



The Process

- 1 Review of the legal framework of KP
- 2 Drafting a bill based on the recommendations of the review
- 3 Consultations with relevant stakeholders and relevant technical and final units
- 4 Review of the bill by the law department, Khyber Pakhtunkhwa
- 5 Addressing the feedback of the law department
- 6 Bill tabled before the provincial cabinet
- 7 Bill presented in provincial legislature for discussion and approval
- 8 Final consent of the governor, Khyber Pakhtunkhwa



Key Features



- The Act*:
 - Prohibits violence against patients, their attendants, and health-care workers;
 - Prohibits damage to health-care facilities and equipment;
 - Broadens the relevant legal definitions to offer protection to health-care workers across various cadres and health-care settings (in hospitals as well as outdoor settings providing health care services)

*<https://www.pakp.gov.pk/acts/the-khyber-pakhtunkhwa-healthcare-service-providers-and-facilities-prevention-of-violence-and-damage-to-property-act-2020/>



The Act*

- Prohibits obstruction and disruption of health-care services;
- Prohibits entry of unauthorized weapons inside health-care facilities, and,
- Elaborates responsibilities of health-care workers and facilities to protect the rights of patients and their attendants.
- Spells out detailed punishments for offences for violations

*<https://www.pakp.gov.pk/acts/the-khyber-pakhtunkhwa-healthcare-service-providers-and-facilities-prevention-of-violence-and-damage-to-property-act-2020/>



Next Steps

- Dissemination of the law to the wider community, including the healthcare providers
- Establishing an incident reporting mechanism
- Monitoring Mechanism to strengthen the implementation of the law





THANK YOU