



Chambers of
Jonathan Caplan QC &
Michael Brompton QC

February 1, 2012

President Barack Obama
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear President Obama,

We are a group of barristers who share a common view that ensuring the rights of persons “wounded and sick” in armed conflict under the Geneva Conventions is fundamental to international legal order.

We applaud the United States’ commitment to advancing global implementation of the laws of war, a key example being your Executive Order revoking the “torture memos” to ensure that the US complies with its obligations under the Geneva Conventions and the Convention against Torture (CAT).

We urge you to reaffirm this commitment by lifting the US “no abortion” prohibition clause applicable to all US foreign aid, including humanitarian medical aid directed for girls and women raped in conflict. The ongoing and systemic use of rape as a weapon of war is a matter of global concern; ensuring that the laws of war are fully enforced to guarantee the rights of victims of rape in conflict is of paramount importance. We submit that the ‘no abortion’ clause violates the rights of girls and women impregnated by rape in armed conflict and who are therefore “wounded and sick” persons, entitled to non-discriminatory and comprehensive medical care under international humanitarian law. Comprehensive medical care includes abortion in these circumstances.

The right of the “wounded and sick” to comprehensive medical care is guaranteed by Article 3 of the Geneva Conventions, Articles 10 & 16 of Additional Protocol I, Articles 7 & 10 of Additional Protocol II, Article 14 of the Convention against Torture, and customary international law. Yet, despite these clear mandates, girls and women impregnated by rape in armed conflict are routinely denied abortions in humanitarian medical settings, largely due to the global effect of the US prohibitions. They are the only category of war victims who are systematically denied their right to complete medical care.

The failure to provide abortions to rape victims, who are also considered torture victims, can itself constitute torture and/or cruel and inhuman treatment; it can have serious consequences for them, such as forcing continued pregnancy, dangerous child bearing, suicide or unsafe abortions. The US prohibition on abortion contains neither rape nor life-endangering exceptions. Although States in armed conflict have a primary obligation to provide care for war victims, common Article 1 of the Geneva Conventions requires all States to “respect” and “ensure respect” for the Geneva Conventions in all circumstances, including in relation to the provision of humanitarian aid. Further, all States have positive obligations to address violations of the Geneva Conventions.

The UK is committed to implementing the laws of war and, in particular, to ensuring appropriate and equal medical care, including abortions for women raped in conflict. The UK Manual of the Law of Armed Conflict makes clear

that: (1) all persons “wounded and sick” in armed conflict must be provided with “humane treatment, and, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition;” and that (2) “persons engaged in medical activities shall neither be compelled to perform acts or to carry out work contrary to, nor be compelled to refrain from acts required by, the rules of medical ethics, other rules designed for the benefit of the wounded and sick, or the Protocol.” The Manual explicit states that: “women must be treated with special respect and no less favorably than men.”

The policy and consultations of the UK’s Department for International Development (DFID) specifically refer to abortion in the context of armed conflict and recognise that providing safe abortion services is critical medical care in this context: “Women and babies affected by crisis, including conflict and natural disaster, often lack access to essential information and services ... this includes ... access to safe abortion and other care as a response to rape.” As British citizens and as lawyers, we are concerned at the effect of the US policy on the ability of the UK and other aid donor countries to comply fully with their own policies and with the laws of war, given the practical reality that donor funds are put together by service providers, including the International Committee of the Red Cross and UN agencies overseeing humanitarian aid. As a result, the fact of US funds to which policy restrictions apply, currently undermines the commitment of other countries to provide humanitarian aid in accordance with non-discrimination policies mandated by the laws of war and medical ethics.

We support the recommendation made by Norway during the Universal Periodic Review of the US at the Human Rights Council in November 2010 that the US “remov[e] blanket abortion restrictions on humanitarian aid covering medical care given women and girls who are raped and impregnated in situations of armed conflict.” We urge you to issue an Executive Order explicitly lifting the restrictions on abortion services for victims of war.

Yours Sincerely,

Amanda Pinto QC, Director International Affairs of the CBA, Vice Chairman of the International Committee of the Bar Council
Max Hill QC, Chairman of the Criminal Bar Association
Leo Price QC
Lord Peter Goldsmith QC
Vera Baird QC
Richard Hermer QC
Phillippa Kaufmann QC
Tim Owen QC
Lord Ken Macdonald QC
Raza Hussain QC
Helen Mountfield QC
Geoffrey Robertson QC
Kirsty Brimelow QC
Sally O’Neill QC former Chairman of the CBA
Michael Wood QC
Joanna Korner CMG QC
Peter Doyle QC

Miranda Moore QC
Tom Kark QC
Andrew Campbell Tiesh QC
Ian Wade QC
Carey Johnston QC
Helen Malcolm QC
Alexander Cameron QC
Simon Csoka QC
John Kelsey Fry QC
Maura McGowan QC
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Peter Lodder QC Immediate Past Chairman of the Bar of England and Wales
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Cairns Nelson QC
Gareth Rees QC
Stephen Leslie QC
Edward Jenkins QC
Anuja Dhir QC
David Green CB QC
Kim Hollis QC
Paul Bogan QC
Sarah Plaschkes QC
George Carter Stephenson QC

Organisations:

Criminal Bar Association
Bar Human Rights Committee

cc:
Rt Hon Dominic Grieve QC MP, Attorney General
Rt Hon Theresa May MP, Secretary of State for the Home Office, Minister for Women and Equalities
Rt Hon William Hague MP, Secretary of State for Foreign and Commonwealth Affairs
Secretary of State, Hillary Rodham Clinton
Harold Koh, Legal Advisor to the State Department