

Afghanistan, Separate Hospital Treatment for Men and Women

[**N.B.:** After the events related in this case, the policy referred to was no longer applied by the Taliban Afghan authorities. See ICRC News: Afghanistan: Women gradually being re-admitted to Kabul Hospitals, 97/47, November 26, 1997.]

N.B. As per the disclaimer ^[1], neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

A. Women barred from Kabul hospitals

[**Source:** Perrin, J.-P., “Les hôpitaux de Kabul interdits aux femmes”, in *Libération*, October 23, 1997; original in French, unofficial translation.]

Women Barred from Kabul Hospitals [...]

Taliban prohibiting treatment for sick women and turning them out of the hospitals [...]

First, the women of Kabul were forbidden to work. Next they were forbidden to study or train for a profession. Then it was decreed that they could go out in public only if accompanied by a husband, father or brother. But nobody in Kabul, previously a very Westernized city, would have imagined that the Taliban, who took control of the Afghan capital just over a year ago, would go so far as to prevent women from receiving medical attention. However, this was what the latest directive issued by the “students of Islamic theology” on 6 September ordered in very clear terms. It is now strictly forbidden for any of the town’s public hospitals to treat women except in emergencies – a rather theoretical and flimsy proviso. And the few female staff remaining in these hospitals are not allowed to give any treatment at all. From now on, until the (hypothetical) opening of a hospital reserved for women, there is only one establishment to treat all the female inhabitants of Kabul. But, according to the Western doctors who have visited it, “the Central Polyclinic” has no running water, no electricity above the second floor, no laboratory, no functioning operating theatre and only one microscope. What is worse, it has a mere 45 beds available for the entire female population of a city which has almost one and a half million inhabitants and, moreover, is devastated by the war and plagued by shortages of all kinds.

Since the decree was issued, not only are sick women being refused treatment but those already in hospital are being turned out – and this is in a town with a large number of medical facilities. In a recently published document, *Médecins sans frontières* (MSF) reported that 12 female patients, some of them with bullet wounds, had been turned out of one of the major hospitals, Wazir Akbar Khan, on October 19, and only two of them were later found at the Polyclinic. That same day saw the dismissal of the last 15 female employees of the Karte Se hospital, which may soon cease to function because male workers are not willing to take charge of the laundry. Worse still, the decision whereby hospitals could treat women in emergencies, taken under Western NGO pressure by the Minister of Health, *Mullawi Abbas*, has been widely condemned. Already the emergency

departments of two of the four large Kabul hospitals are refusing to admit women. At the beginning of October a woman in a deep coma was turned away and sent home. In September, another woman suffering from a highly contagious form of tuberculosis was also sent home before she had completed her course of treatment, thus exposing her entire family to the risk of infection. And recently a doctor at one of the large hospitals disclosed that he had not dared to treat a woman suffering from 80% burns because he would have had to remove her clothing.

The NGOs present in Kabul are even more “sickened” by the violence with which the ministerial directives are applied. On September 27, the Ministry decided to close down all private clinics with in-patient facilities, and just two days later members of the Taliban entered one of these clinics and violently ejected two women who were in the process of giving birth. “What we are seeing is the total destruction of a health system which until now, in contrast to the education system, has remained relatively unscathed. People should be aware that today women are dying at home in Kabul because the Taliban will not allow them access to treatment. First of all, these women are afraid to go out. And then, when they do pluck up the courage to leave their homes, it is often too late and their condition is irremediable. The same applies to their children”, declared Pierre Salignon, the coordinator of the MSF mission in Kabul. [...]

What the military/religious order of the Taliban is endeavouring to establish is a system of health care conforming to the ideal Islamic society which they are advocating, a system in which men and women are kept strictly apart, the women often living a completely cloistered life. The most incredible aspect of the situation is that this policy of apartheid is being financed, initiated even, by the World Health Organization. MSF notes in its report that the notorious directive depriving Kabul’s female inhabitants of medical treatment coincided with the beginning of work on the renovation of the Rabia Balkhi hospital, which is destined to become the only “women’s hospital” in the capital and might open in a year’s time. The main donor for this construction project turns out to be WHO, which has made a

contribution of \$64,000 for the first six months.

B. Security Council resolution 1193 (1998)

[Source: UN Doc. S/RES/1193 (August 28, 1998)]

The Security Council,

Having considered the situation in Afghanistan,

Recalling its previous resolution 1076 (1996) of October 22, 1996 and the statements of the President of the Security Council on the situation in Afghanistan,

Recalling also resolution 52/211 of the General Assembly,

Expressing its grave concern at the continued Afghan conflict which has recently sharply escalated due to the Taliban forces' offensive in the northern parts of the country, causing a serious and growing threat to regional and international peace and security, as well as extensive human suffering, further destruction, refugee flows and other forcible displacement of large numbers of people, [...]

9. *Urges* all Afghan factions and, in particular the Taliban, to facilitate the work of the international humanitarian organizations and to ensure unimpeded access and adequate conditions for the delivery of aid by such organizations to all in need of it;
10. *Appeals* to all States, organizations and programmes of the United Nations system, specialized agencies and other international organizations to resume the provision of humanitarian assistance to all in need of it in Afghanistan as soon as the situation on the ground permits; [...]
12. *Reaffirms* that all parties to the conflict are bound to comply with their obligations under international humanitarian law and in particular the Geneva Conventions of August 12, 1949, and that persons who commit or order the commission of grave

breaches of the Conventions are individually responsible in respect of such breaches;
[...]

14. *Urges* the Afghan factions to put an end to the discrimination against girls and women and to other violations of human rights as well as violations of international humanitarian law and to adhere to the internationally accepted norms and standards in this sphere [...].

Discussion

1. Is the fighting in Afghanistan an international or a non-international armed conflict? Are the provisions of the Conventions on grave breaches applicable in non-international armed conflicts? Does para. 12 of the Security Council resolution qualify the conflict as an international armed conflict? Or does it affirm that the concept of grave breaches applies in non-international armed conflicts? (GC I-IV, Arts 2 ^[2] and 3 ^[3], Arts 50 ^[4]/51 ^[5]/130 ^[6]/147 ^[7] respectively; GC IV, Art. 4 ^[8])
2.
 - a. Does the requirement to separate health facilities for women and men violate IHL? Would you answer differently if such separation meant that women did not receive equal care and treatment? (GC I ^[9]-IV ^[10], Art. 3) Is a complete separation between the health systems for men and women compatible with IHL if both systems provide the same standard of treatment? Is such a separation compatible with international human rights law? (*See* para. 14 of the Security Council resolution)
 - b. Would the situation under IHL be different if the IHL of international armed conflicts were applicable? (GC I ^[9], Art. 12 ^[11]; P I ^[12], Art. 10 ^[13])
 - c. In what circumstances does the treatment of women described in the newspaper article amount to a grave breach of IHL, if the law of international armed conflicts is applicable? (GC I ^[9], Art. 50 ^[14]; GC IV ^[10], Art. 147; P I ^[12], Arts 11(4) ^[15] and 85 ^[16])
3.
 - a. Do such restrictions for treatment make humanitarian action impossible in these particular circumstances?
 - b. If humanitarian organizations choose not to stay under such circumstances, is their departure a protest against the lack of adequate treatment and care for women? Or against the policy of separating men and women? Is the latter not a

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