

## Response to the Draft of the 'Global Code of Conduct for Investigating and Documenting Conflict-Related Sexual Violence'

The Institute for International Criminal Investigations (IICI) ([www.iici.global](http://www.iici.global)) and the Preventing Sexual Violence in Conflict Initiative of the UK government (PSVI) in consultation with Nadia's Initiative ([www.nadiasinitiative.org](http://www.nadiasinitiative.org)) have introduced the draft of a 'Global Code of Conduct for Investigating and Documenting Conflict-Related Sexual Violence' ('the Draft Global Code'; <https://www.murad-code.com/home>). They have called for feedback by practitioners and survivors from all over the world. We would like to answer their call for feedback.

This response has been initiated by an ad hoc group of feminists who have been engaged on an ongoing basis in the field of conflict related sexual violence since the 1990s. We became concerned after studying the Draft Global Code and analyzing its full implications. On the basis of this analysis and our longstanding experience, we find that there are serious and far-reaching concerns to be addressed. These issues arise from the proposed approach of the Draft Global Code itself, and in our view cannot be addressed by revising the Code. Moreover, a final version of the Global Code is planned to be implemented globally, which would be ineffective without binding all those undertaking documentation, whether through enforcement mechanisms or funding conditionality. In our view, however, any such implementation would have highly detrimental consequences.

Given the far-reaching impact of the Draft Global Code for the future treatment of survivors of sexual violence in armed conflict, it seems appropriate to us to share our reflections publicly. We thereby hope to contribute to existing efforts to reflect on and discuss the Draft Global Code.

We would like to raise the following concerns:

1.

The Draft Global Code focuses on the documentation of individual survivor's experiences, rather than addressing structural factors (including the institutional, governmental, and professional issues) that give rise to negative and prejudicial effects of such documentation. For example, documentation can give rise to credibility challenges to survivors of conflict-related sexual violence in criminal proceedings. However, the Draft Global Code does not address the prejudicial use of prior statements in legal proceedings. As such, it does not address the institutional reform required to prevent such discriminatory practices.

**It is our concern** that the Draft Global Code does not address the institutional, government, and professional reform necessary to protect survivors from the potentially negative consequences of documentation.

2.

The wording of the Draft Global Code creates a 'we' of a 'target group' of 'international' documenters and contrasts it with a 'they' of all 'local' survivors of sexual violence.

**It is our concern** that the Draft Global Code assumes that the 'target group' undertaking documentation are 'internationals', with resources, skills, and power. It assumes that 'victims' are 'locals' without resources or skills, who do not themselves undertake documentation. This framing does not recognise that survivors may be activists, or that 'local' actors, activists, and professionals may themselves want to undertake documentation for important reasons such as future prosecutions, advocacy to make such crimes visible, or peace-building activities. The Draft Global Code's approach does not recognise or build local ownership, engagement, or capacities. Equally importantly, by seeing survivors only as 'locals', the Draft Global Code ignores that they are also part of the international community.

**It is our concern** that a global code of this nature cannot address the many different power relations between the 'target group' and 'survivors', and within target and survivor groups themselves.

**It is our concern** that the Draft Global Code characterises survivors as those who should be 'treated' in the best way possible, but does not recognise them as actors and experts and/or empower them to be/become actors and experts. For example, this is indicated by statements such as 'we allow (sic) them to make their own informed choices' (Draft Global Code 1.4).

## SURVIVORS AND 'LOCALS'

### 3.

The Draft Global Code seeks to recognise survivors as individuals, but also looks at 'the survivor' as a homogenous group, and assumes they have the same interests in 'justice' (see Draft Global Code 1.1 and 1.6).

**It is our concern** that the Draft Global Code produces an image of 'the survivor' which is far from reality, ignoring that survivors may have their own political and economic interests or ideas of justice that might not be shared with other survivors. Moreover, these interests of individual survivors may be in conflict with those of other survivors, or with other groups of survivors.

**It is our concern** that the Draft Global Code focuses on 'survivors', who are understood as individual 'victims'. As the Code is conceived, it cannot engage with the 'dead', or affected communities and societies. This issue would not be 'corrected' by having wider categories of survivors or victims, as they would still be understood as individual victims.

**It is our concern** that the Draft Global Code does not consider that survivors may not share 'local' contexts. This approach ignores that, for example, interna-

tional law recognises victims who have different citizenship or nationality but are part of legally protected groups such as prisoners of war or protected groups under the Genocide Convention.

**It is our concern** that the Draft Global Code assumes that all survivors are survivors of sexual violence committed in short and completed wars, rather than long and protracted conflicts.

#### 4.

The Draft Global Code claims to enable those who are interviewed to 'make their informed choices' and to give their 'informed consent' to documentation.

**It is our concern** that the interviewees are exposed to the target group of documenters, researchers and investigators without receiving adequate and independent advice. Different people from the target group, however, all have their own interests and purposes (such as political and financial interests), which will frequently not be in the best interests of survivors. Principle 5 of the Draft Global Code – 'adding value or don't do it' – leaves this assessment in the hands of the target group without empowering survivors to make this assessment themselves. Independent advice, including legal advice, which serves only the client/survivor should be mandatory. This then raises the issue of available resources.

**It is our concern** that the Draft Global Code does not address the need for people from the target group also to have legal advice. For example, the target group may be required to disclose documentation in criminal matters where they do not have professional privilege (such as that held by doctors or lawyers).

**It is our concern** that the underlying assumption of the Draft Global Code is that documentation is necessarily 'good', and that all survivors want documentation.

## 5.

The Draft Global Code proposes that the target group must work with 'locally-based partners' (see Draft Global Code 4.7). However, it does not recognise the potential serious risks that local co-operations can mean for survivors, or that survivors or locally-based partners may themselves be engaged in important documentation.

**It is our concern** that the Draft Global Code does not adequately reflect that working with 'locally-based partners' can cause an array of problems, such as competition for partnerships between local groups, gatekeeping by elites, and exclusion of less powerful survivors. These problems can be divisive for communities who need to co-exist during and after documentation.

**It is our concern** that such partnerships do not necessarily entail quality or ethical documentation. The serious risks of documentation for survivors, family members, and other witnesses in the short and longer term are not acknowledged. Standards of data security, -protection, and -deletion necessary for quality and ethical documentation are not addressed.

**It is our concern** that 'international' target groups are characterised as the 'legitimate' drivers and owners of documentation, rather than survivors or 'locally based' groups.

## 6.

Regarding the proposed 'charter of survivors', which has yet to be publicly released, there is the risk that survivors who are asked to draft the proposed charter are already privileged members of their communities.

**It is our concern** that a 'chosen' few survivors become speakers on behalf of all survivors. This risks silencing those who are not among the 'chosen few', and ignores that 'the survivors' are not a homogenous group. Moreover, the division

between the Draft Global Code 'expert' commentary and the 'survivors' charter reflects the privileging of experts as documenters and survivors as providers of information (and not documenters). Such an approach amplifies rather than addresses the existing weaknesses in the Draft Global Code.

## 'INTERNATIONAL' TARGET GROUP

### 7.

The Draft Global Code intends to be a global code of conduct that is supposed to become a binding standard for *anybody* who is involved in the documentation and investigation of conflict-related sexual violence – governmental and non-governmental, public and private, commercial and non-commercial initiatives. The 'target group' includes investigators, documenters, police, lawyers, NGO personnel, reporters, researchers, high-level delegates, activists, celebrities, interpreters, intermediaries and other practitioners from all over the world.

**It is our concern** that such a generalising approach does not take into account the respective power relations, conditions, purposes, interests, resources, and professional obligations of the actors. A global code that applies to all persons ignores their very different situations and must ultimately fail to address them properly. For example, it must be recognised that there is a significant difference as to whether interviews are used for criminal proceedings or by a researcher for a specific purpose, and that these different circumstances give rise to distinct ethical and professional obligations and standards.

**It is our concern** that the Draft Global Code includes prosecutors and police investigators in its target group. However, this target group will not use a code of this nature. Prosecutorial bodies worldwide are unlikely to apply such a general code, because they are subject to national laws and professional standards. Moreover, it is unlikely such bodies have the resources or willingness to provide the safety, medical and psychological support that the Draft Global Code de-

clares to be standard, and is more likely to lead to resistance to necessary reform in this area. In any event, legal documentation guidelines are already provided by the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict.

## PRIVATISATION AND COMMERCIALISATION

### 8.

The Draft Global Code intends to address the increasing documentation by private and non-state actors. In doing so, it accepts the privatisation and commercialisation of documentation and data management by powerful international and professional organisations, while at the same time weakening the essential role of civil society actors in undertaking documentation.

**It is our concern** that the Draft Global Code accepts and promotes the increasing privatisation of criminal investigations. As such, the Draft Global Code permits and thereby legitimates this increasing privatisation.

**It is our concern** that by accepting such privatisation, the Draft Global Code will weaken political support for, and divert resources from, investigations by the State and/or United Nations bodies. It encourages States and the United Nations, who are the primary duty bearers, to abdicate their responsibility to private actors who have their own political and financial interests.

**It is our concern** that the Draft Global Code accepts the increasing commercialisation of documentation and data management, as it accepts the funding of private and non-state actors to undertake documentation.

**It is our concern** that the Draft Code presumes that 'ownership' of documentation is given to 'international' documenters, and that they will decide how this data is managed. Given that the Draft Code emphasises the need for co-

ordination and co-operation between target groups (Draft Global Code 4.6), and the need to prevent reduplication of documentation, we are concerned that this approach will lead to centralised documentation holdings by 'internationals', who will then decide what data is provided to which 'internationals', and whether data additional to those holdings is necessary. Both 'international' documenters and holders of data are never 'neutral' document holders, but have their own financial and political interests.

## 9.

The Draft Global Code, if fully implemented, requires resources that few individuals or organisations are able to provide. This issue is particularly acute when interviews take place in war zones or post-conflict areas.

**It is our concern** that only resource rich 'internationals' will be able to meet these requirements, thereby excluding legitimate documentation by 'local' actors who may not have the resources required by the Draft Global Code, but still undertake ethical and necessary documentation. Given this, the Draft Global Code increases the likelihood of having western-based consultancies becoming primary documenters, and so risks increasing commercialisation of documentation.

**It is our concern** that the Draft Global Code ignores the crucial question of resources and does not provide target groups with effective assistance that would enable them to implement its stated principles.

## ETHICS AND MORALS

### 10.

The Draft Global Code does not address issues of accountability and responsibility. Enforcement mechanisms are identified as an issue for consultation. How-



ever, there is a fundamental problem for the approach proposed by the Code. On the one hand, the Code requires implementation for it to be effective. On the other hand, any such implementation is highly problematic in itself. It creates new and unresolvable serious issues – as the Draft Global Code feedback form questions themselves show. Who has the authority and will be given the power to assess, evaluate and sanction breaches of the Draft Global Code?

**It is our concern** that the Draft Global Code provides a permissive approach to documentation that encourages actors from the target group to believe that they are legitimately able to undertake documentation if they comply with the Code.

**It is our concern** that any effort to establish any kind of global, regional, or local mechanism for implementation or compliance with the Draft Global Code creates a further set of fundamental problems.

## 11.

The Draft Global Code sets out principles that are rhetorically powerful, but are unable to be applied in practice. The Code outlines generalising and moralising principles concerning documentation. Such a paternalistic, indeed, colonial approach which exploits survivors' experiences and takes ownership away from them, cannot address the practical challenges of resources or capacity to undertake documentation.

**It is our concern** that the Draft Global Code is not of practical help to those who would be willing to use it. The Draft Global Code will work against enabling local ownership of documentation, and to reinforce existing power disparities and resource exploitation.

## CONCLUSION

We recognise the fundamental concerns that led IICI, PSVI and Nadia's Initiative to create the Draft Global Code, such as the overdocumentation, the often reckless and harmful treatment of survivors and witnesses of sexual violence in armed conflict as well as the exploitation of their experiences for particular interests. We share these concerns.

However, the proposed global code of conduct should not be seen as a solution to the challenge of unsafe, unethical, or ineffective documentation practices, for the reasons outlined above.

On the contrary, the Draft Global Code may in fact make it harder to develop effective responses to this challenge. This is because the Draft Global Code suggests that implementing these principles will resolve this challenge, when it is unlikely to do so. At the same time, it may also lead actors from the target group to believe they are authorised to interview survivors once they are familiar with the wording of the Global Code, creating further poor documentation practice. This approach runs the risk of preventing an adequate analysis of the causes and consequences of unsafe, unethical, or ineffective documentation practices. It also runs the risk of preventing the development of a holistic approach that can address the individual, institutional, communal and structural changes required to address these harmful practices.

A more effective strategy would be to clearly identify target groups undertaking documentation, and the causes of unsafe, unethical, or ineffective documentation practices. Target groups can then develop and implement appropriate standards within their own sectors and professions. For example, the target groups of journalists and lawyers have their own national and international professional associations, standards, and regulatory bodies. The relevant target group would undertake an analysis of specific sectorial and professional challenges, standards and best practices, and engage with their national and international bodies and mechanisms to develop and implement appropriate standards.

It is also important to recognise that these sectors and professions will include survivors.

Taking into account all of these fundamental concerns (such as assumption of homogeneity of victims; promotion of elitism, privatisation, us/them division; accountability and enforcement challenges; the ignoring of existing policies and practices), it is our view that the Draft Global Code cannot resolve the problems it seeks to address. On the contrary, it has the significant potential to make these problems worse.

For these reasons, our recommendation is not to proceed with the Draft Global Code, which is a 'top down' code claiming to be globally enforceable but is most likely to ultimately sanction those it seeks to protect. Instead, we would recommend public debate that facilitates all actors in the field to enable the development of empowering approaches to the problem of unsafe, unethical, or ineffective documentation practices.

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