CENTER FOR REPRODUCTIVE RIGHTS

FACTSHEET: SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS IN CONFLICT

Women and girls affected by conflict face increased risks of sexual violence and urgently need sexual and reproductive healthcare services, such as obstetric and antenatal care for pregnant women, access to contraceptive information and services, including emergency contraception, and access to safe abortion and post-abortion care. Unfortunately, women are often unable to, or prevented from, accessing these services.[1] Addressing sexual violence and the lack of sexual and reproductive health information and services in these settings is central not only to an effective humanitarian response but also to fulfilling fundamental human rights obligations.

The growing number of violent conflicts worldwide[2] has been accompanied by an increase in sexual violence targeting women and girls and an increase in internally displaced persons (IDPs) and refugees, the majority of whom are women and children.[3] According to the United Nations High Commissioner for Refugees (UNHCR), there are nearly 60 million forcibly displaced people throughout the world[4] and 13.9 million were newly displaced due to conflict or persecution in 2014. Access to obstetric and antenatal care for pregnant women, access to contraceptive information and services, including emergency contraception, and access to safe abortion and post-abortion care, especially for survivors of sexual and gender-based violence, are among the most pressing issues facing women affected by conflict.

Young women and girls affected by conflict face an increased risk of physical and sexual violence. This includes an increase in child, early and forced marriage due to a lack of economic resources and because this practice is viewed by families as a way to "protect" their daughters.[5] According to UNICEF, the rate of child marriage among Syrian refugee girls in Jordan rose to 32% in 2014, compared to an average of 13% in Syria before the war.[6] Women and girls also face increased risks of sexual violence, including rape, sexual assault, forced pregnancy and forced abortion, trafficking, forced marriage, and forced prostitution.[7]

Moreover, women and girls affected by conflict, particularly survivors of sexual violence and displaced women and girls, are often in urgent need of sexual and reproductive healthcare. Disintegrating health infrastructure in conflict and post-conflict settings can have critical impacts on reproductive health. In countries designated as fragile states, the estimated lifetime risk of maternal mortality is 1 in 54.[8] While there continues to be a need for more reliable data for maternal mortality in conflict and displacement settings, there is little doubt that conflict has a negative impact on maternal mortality and reproductive health.[9] In addition, unsafe, restrictive, or repressive environments; prohibitive costs; lack of information in a language they understand; and fear of further violence or stigmatization for seeking care make it difficult for women and girls to access these services.[10]

IN COUNTRIES DESIGNATED AS FRAGILE STATES, THE ESTIMATED LIFETIME RISK OF MATERNAL MORTALITY IS

The Committee on Economic, Social and Cultural Rights has recognized that women and girls affected by conflict are disproportionately exposed to a high risk of violation of their rights, and has called on states to implement measures to guarantee non-discrimination and substantive equality; and such measures must acknowledge and seek to overcome the often exacerbated impact that intersectional discrimination has on the realization of the right to sexual and reproductive health.[11]

The Global Study on the implementation of United Nations Security Council Resolution 1325 on Women and Peace and Security, which highlights the role of women in conflict

prevention, resolution and peacebuilding, reports that a large number of women and girls do not report sexual violence "because there are no easily accessible services or ways to report safely, receive help and be treated with dignity."[12]

In addition to the lack of access to healthcare services, survivors of sexual violence and those denied access to sexual and reproductive healthcare are rarely able to seek justice and remedies for the violations they have had to endure. Disintegrating judicial systems in conflict areas, corruption, discrimination against refugee populations in host countries, fear of reprisals against their families or themselves, and the stigma associated with sexual violence all prevent women and girls from seeking justice and legal remedies for the human rights violations they have experienced.

The realization of the right to sexual and reproductive health necessitates access to a range of services, such as water and sanitation, education, including comprehensive sexuality education, and the means to maintain a livelihood. The disintegration of the health system and wider infrastructure hinders the full realization of sexual and reproductive health and rights for women and girls' affected by conflict.[13] As stated by the Committee on Economic, Social, and Cultural Rights in its General Comment 22, the right to sexual and reproductive health is not limited to health care but also extends to the underlying determinants of sexual and reproductive health.[14]

SEXUAL AND REPRODUCTIVE HEALTH FOR WOMEN AND GIRLS AFFECTED BY CONFLICT: A HUMAN RIGHTS ISSUE

In conflict and post-conflict settings, states remain bound by their international human rights obligations both in their jurisdiction and extraterritorially to persons within their effective control.[15] Furthermore, states receiving refugees are obligated to respect, protect, and fulfill the refugees' human rights.[16] States' obligations to realize women and girls' sexual and reproductive health and rights, including for women and girls affected by conflict, are enshrined in the human rights listed below.

The Right to Equality and Non-Discrimination: Recognizing that women and girls' ability to realize their sexual and reproductive health and rights is inherently linked to their ability to access other human rights on a basis of equality, human rights treaty monitoring bodies have repeatedly recognized that states must address women and girls' distinct health needs in order to ensure equality and fulfill obligations of non-discrimination.[17]

The Right to Life: States must ensure that women can survive pregnancy and childbirth, including by ensuring their access to adequate pre- and post-natal care, emergency obstetric services, and skilled birth attendants.[18] Treaty monitoring bodies have further linked high rates of maternal mortality to lack of access to reproductive health services, including contraception; unsafe abortion; adolescent pregnancy; and child marriage.[19]

The Right to Health: Treaty monitoring bodies have recognized that states should guarantee available, accessible, acceptable, and good quality reproductive health information, services, goods, and facilities for all women, free from discrimination, violence and coercion.[20] Recognizing the breakdown in access to health services in conflict-affected areas, the Committee for the Elimination of Discrimination Against Women (CEDAW Committee) has explicitly called on states to ensure access to sexual and reproductive health care in conflict settings, including maternal health services, contraception, emergency contraception, safe abortion services, post-abortion care, and HIV/AIDS prevention and treatment.[21]

The Right to be Free from Torture, Cruel, Inhuman, or Degrading Treatment[22]: International and regional human rights mechanisms recognize that forcing women to carry to term pregnancies resulting from sexual violence can amount to ill-treatment.[23]

The Right to be Free from Harmful Traditional Practices: International and regional human rights treaties have recognized the right to be free from harmful traditional practices such as child, early, and forced marriage and female genital mutilation.[24] States must take all appropriate measures to eliminate customs and practices which constitute discrimination against women.[25]

The Right to be Free from Sexual and Gender-Based Violence: Under international human rights law, states must prohibit, prevent, investigate, and punish all forms of gender-based violence.[26] Furthermore, under certain conditions, acts of sexual violence can constitute a war crime or a crime against humanity.[27]

The Right to an Effective Remedy: States must provide appropriate reparations for individuals whose rights are violated, including compensation, restitution, rehabilitation, measures of non-repetition and, where needed, measures to promote physical and psychological recovery.[28]

ENHANCING ACCOUNTABILITY

The UN Security Council has adopted several resolutions on 'Women, Peace and Security' (WPS) which together comprise the international policy framework to address the challenges women face in conflict and post-conflict situations.[29]

Although the WPS agenda has contributed substantially to a framework for preventing and ending impunity for international crimes related to sexual violence, it has focused heavily on the use of sexual violence and especially rape as weapons of war.[30] As a result of the focus on rape as a weapon of war, accountability for victims and survivors has been narrowly interpreted as the international criminal responsibility of perpetrators. UNSC Resolution 2242, the eighth WPS resolution, acknowledges the accountability deficits to date and urges the Secretary General and other UN entities to address them.[31] In addition to rape and sexual violence as a weapons of war, many human rights violations stem from sexual violence and the lack of access to sexual and reproductive health services.

A HUMAN RIGHTS-BASED APPROACH IS CRITICAL

A human rights-based approach to addressing sexual violence and sexual and reproductive rights violations in conflict settings recognizes and addresses the root causes of such violations to better prevent and eradicate these practices. This approach would take stock of legal protection gaps and harmful policies in national contexts that need to be changed, reaffirm states' obligations under human rights law, and clarify the positive measures states should take to ensure women's access to sexual and reproductive health services. Further, a human rights-based approach would prioritize the meaningful participation of women in all stages of humanitarian response and interventions, from the development to the implementation, monitoring, and evaluation of service policies and programs. A human rights-based approach would help guarantee a broader understanding of accountability by ensuring that there are functioning mechanisms to access justice and that these mechanisms are able to confer meaningful and effective remedies and reparations on a basis of non-discrimination.[32]

The right to an effective remedy under international human rights law includes the right to appropriate reparations, including compensation, restitution, rehabilitation, measures of non-repetition and, where needed, measures to promote physical and psychological recovery.[33] There should also be an appropriate gendered assessment to the harm that is suffered, meaning that reparations should address women's specific needs and the structural inequalities that enabled the violations, with a view to ensuring these violations do not continue.[34]

The CEDAW Committee has called for reparative measures to be transformative, meaning that they address "the structural inequalities which led to the violations of women's rights, respond to women's specific needs and prevent their re-occurrence."[35] The CEDAW Committee's General Recommendation No. 30, which sets forth states' obligations to respect, protect, and fulfil women's rights and ensure gender equality in times of conflict, explicitly states that the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) remains in effect before, during, and in the aftermath of conflict. It also elaborates on states' due diligence obligation to hold non-state actors accountable for crimes perpetrated against women.[36]

Collecting data and conducting research on violations of women and girls' sexual and reproductive health and rights, such as accurately measuring maternal mortality and morbidity rates, unintended pregnancies and unsafe abortion rates, would also constitute a powerful accountability measure for women and girls affected by conflict. While women and girls might be difficult to reach or unwilling to share information because of fear of reprisals, stereotypes or social and cultural norms, collecting such data is absolutely critical to promoting evidence-based interventions and advocacy strategies aimed at ensuring the full realization of women and girls' sexual and reproductive health and rights.

General Recommendation No. 30 by the CEDAW Committee states that there is a need for a concerted and integrated approach that places the implementation of the Security Council's WPS agenda into the broader framework of the implementation of the CEDAW Convention and its Optional Protocol.[37] The results of the Global Study on implementation of UNSC Resolution 1325 echo this recommendation by calling for increased linkages between the WPS agenda and existing human rights mechanisms, such as CEDAW as well as the Human Rights Council and its mechanisms.[38]

CALL TO ACTION

- Conflict and post-conflict states, host states, and donor states should prioritize the realization of women and girls' sexual and reproductive health and rights, including through the provision of maternal health care, contraception, safe abortion care, and post-abortion services.
- States, relevant agencies, and humanitarian organizations should work together to allocate adequate resources to gather data on sexual violence and the provision of sexual and reproductive health services to ensure that interventions reflect the actual situation of women and girls affected by conflict.
- Governments should take effective measures to prevent and address violations of women and girls' sexual and reproductive rights in conflict settings not only by holding perpetrators accountable, but also by providing holistic reproductive health services for all women affected by conflict, and ensuring access to justice and redress for sexual and reproductive rights violations and violations stemming from sexual violence.
- International human rights bodies and political bodies, including the Human Rights Council, must address sexual violence and violations of sexual and reproductive rights in conflict settings by including this issue in state reviews, passing relevant resolutions calling on states to recognize the importance of a human rights-based response, and strengthening the human rights underpinnings of the WPS framework.

Endnotes

[1] United Nations Population Fund (UNFPA), State of World Population 2015: Shelter from the Storm, A Transformative Agenda for Women and Girls in a Crisis-Prone World [hereinafter UNFPA, State of World Population 2015], *available at* http://www.unfpa.org/sites/default/files/sowp/downloads/State_of_World_Population_2015_EN.pdf .

[2] *See* Letter dated 1 October 2015 from the Permanent Representative of Spain to the United Nations addressed to the Secretary General, p.2, U.N. Doc. S/2015/749 (2015), *available at*: http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2015_749.pdf.

[3] *See* United Nations High Commissioner for Refugees (UNHCR), World at War: *UNHCR Global Trends, Forced Displacement in 2014* [hereinafter UNHCR, World at War], *available at* http://unhcr.org/556725e69.html; International Committee of the Red Cross (ICRC), *Humanitarian Perspectives on International Security in Times of Mutating* Conflicts, Speech given by Mr. Peter Maurer, President of the ICRC (May 29, 2015), *available at* https://www.icrc.org/en/document/gcsp-20-years-constructive-change-peace-and-security-world-humanitarian-perspectives; ICRC, *Wars Without Limits are Wars Without* End, Speech given by Mr. Peter Maurer, President of the ICRC (March 5, 2015), *available at* https://www.icrc.org/en/document/wars-without-limits-are-wars-without-end.

[4] UNHCR, World at War, *supra* note 3, at 2.

[5] As highlighted in the following reports, there is no evidence that marriage protects women and girls from violence. *See* United Nations High Commissioner for Human Rights (OHCHR), *Preventing and Eliminating Child, Early and Forced* Marriage, para. 20, U.N. Doc. A/HRC/26/22 (2014); Save the Children, Too Young to Wed: The Growing Problem of Child Marriage Among Syrian Girls in Jordan, 1 (2014), *available at* http://www.savethechildren.org/atf/cf/%7B9def2ebe-10ae-432c-9bd0-df91d2eba74a%7D/TOO_YOUNG_TO_WED_REPORT_0714.PDF.

[6] Press Release, United Nations Children's Fund (UNICEF), Concern over child marriage among vulnerable girls in Jordan (July 16, 2014), https://www.unicef.org/mena/media_9469.html

[7] World Health Organisation (WHO), World Report on Violence and Health, 147-174 (2002), *available at* http://apps.who.int/iris/bitstream/10665/42495/1/9241545615_eng.pdf.

[8] WHO, UNICEF, UNFPA, World Bank Group, and the United Nations Population Division, Trends in Maternal Mortality: 1990 to 2015, at 26 (2012), *available at* http://apps.who.int/iris/bitstream/10665/194254/1/9789241565141_eng.pdf.

[9] *See, e.g., Special* Rapporteur on the right of everyone to the highest attainable standard of physical and mental health, *Rep. of the Special Rapporteur, Anand Grover*, para. 43, GAOR, 68th Sess., U.N. Doc. A/68/297 (2013); Therese McGinn, Sara Casey, Susan Purdin, and Mendy Marsh, *Reproductive Health for conflict-affected people: Policies, research and programmes*, 45 Overseas Development Institute Humanitarian Practice Network 10-11 (June 2004); *see also* Kayla McGowan, *Closing the Gaps of Maternal Health in Conflict and Crises*, Maternal Health Task Force Blog (Dec. 15, 2016), https://www.mhtf.org/2016/12/15/closing-the-gaps-of-maternal-health-in-conflict-and-crisis/.

[10] Doctors Without Borders, *Care for Victims of Sexual Violence, An Organization Pushed to its Limits: The Case of Médecins Sans Frontières* (April 2015), *available at* http://www.doctorswithoutborders.org/article/care-victims-sexual-violence-organization-pushed-its-limits-case-m%C3%A9decins-sans-fronti%C3%A8res.

[11] Committee on Economic, Social and Cultural Rights (CESCR Committee), *General Comment No. 22 (2016) on the Right to sexual and reproductive health*, para. 30, U.N. Doc. E/C.12/GC/22 (2016) [hereinafter CESCR Committee, *Gen. Comment No. 22*].

[12] UN Women, *Preventing Conflict, Transforming Justice, Securing the Peace: A Global Study on the Implementation of the UNSC Resolution 1325*, at 73 (2015), *available at* http://www.unwomen.org/~/media/files/un%20women/wps/highlights/unw-global-study-1325-2015.pdf.

[13] *See* Sneha Barot, *In a State of Crisis: Meeting the Sexual and Reproductive Health Needs of Women in Humanitarian Situations*, 20 Guttmacher Policy Review (Feb. 13, 2017), *available at* https://www.guttmacher.org/gpr/2017/02/state-crisis-meeting-sexual-and-reproductive-health-needs-women-humanitarian-situations

[14] *See* CESCR Committee, *Gen. Comment No. 22*, *supra* note 11, para. 5.

[15] *See* Committee on the Elimination of Discrimination Against Women (CEDAW Committee), *General Recommendation No. 30: Women in Conflict Prevention, Conflict and Post-Conflict Situations*, para. 8, U.N. Doc. CEDAW/C/GC/30 (2013) [hereinafter CEDAW Committee, *Gen. Recommendation No. 30*].

[16] *See* CEDAW Committee, *General Recommendation No. 32*: *Gender-Related Dimensions of Refugee Status, Asylum, Nationality and Statelessness of Women*, para. 4, U.N. Doc. CEDAW/C/GC/32 (2014) [hereinafter CEDAW Committee, *Gen. Recommendation No.* 32]; OHCHR, Fact Sheet N°20: Human Rights and Refugees, *available at* http://www.ohchr.org/Documents/Publications/FactSheet20en.pdf.

[17] *See* CEDAW Committee, *Concluding Observations: Congo*, para. 35(f), U.N. Doc. CEDAW/C/COG/CO/6 (2012); CEDAW Committee, *Concluding Observations: Uruguay*, para. 203, U.N. Doc. A/57/38 (2002); CESCR Committee, *General Comment No. 16*: *Article 3* (34th Sess., 2005), *in* Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, para. 29, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (2008); CEDAW, *Gen. Recommendation No. 32*, *supra* note 16, paras. 3-4.

[18] *See* CEDAW Committee, *Concluding Observations: Belize*, para. 56, U.N. Doc. A/54/38/Rev.1 (1999); Human Rights Committee, *Concluding Observations: Mali*, para. 14, U.N. Doc. CCPR/ CO/77/MLI (2003); Committee on the Rights of the Child (CRC Committee), *Concluding Observations: Democratic Republic of Congo*, paras. 33-34, U.N. Doc. CRC/C/COD/CO/2 (2009).

[19] *See* CEDAW Committee, *Concluding Observations: Malawi*, para. 31, U.N. Doc. CEDAW/C/MWI/CO (2006); CESCR Committee, *Concluding Observations: El Salvador,* para. 22, U.N. Doc. E/C.12/SLV/ CO/3-5 (2014); Human Rights Committee, *Concluding Observations: Panama*, para. 9, U.N. Doc. CCPR/C/PAN/CO/3 (2008); CRC Committee, *Concluding Observations: Haiti*, para. 46, U.N. Doc. CRC/C/15/ Add.202 (2003); Committee Against Torture (CAT Committee), *Concluding Observations: Yemen*, para. 31, U.N. Doc. CAT/C/YEM/ CO/2/Rev. 1 (2010).

[20] *See* CESCR Committee, *General Comment No. 14*: *The Right to the Highest Attainable Standard of Health (Art. 12 of the International Covenant on Economic, Social and Cultural Rights)*, para. 12, U.N. Doc. E/C.12/2000/4 (2000); CEDAW Committee, *General Recommendation No. 24: Article 12 of the Convention (Women and Health)*, para. 2, U.N. Doc. A/54/38/Rev. 1 (1999).

[21] *See* CEDAW Committee, *Gen. Recommendation No. 30*, *supra* note 15, para. 52(c); CEDAW Committee, *Gen. Recommendation No. 32, supra* note 16, paras. 33-34.

[22] *See* Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *adopted* Dec. 10, 1984, G.A. Res. 39/46, U.N. GAOR, 39th Sess., Supp. No. 51, U.N. Doc. A/39/51 (1984), 1465 U.N.T.S. 85 (*entered into force* June 26, 1987); International Covenant on Civil and Political Rights, *adopted* Dec. 16 1966, art. 7, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* Mar. 23, 1976); Convention for the Protection of Human Rights and Fundamental Freedoms, *adopted* Nov. 4, 1950, art. 3, 213 U.N.T.S. 222, Eur. T. S. No. 5 (*entered into force* Sept. 3, 1953).

[23] *See* L.M.R. v. Argentina, Human Rights Committee, Communication No. 1608/2007, U.N. Doc. CCPR/C/101/D/1608/2007 (2011); P. and S. v. Poland, No. 57375/08 Eur. Ct. H. R. (2012); CAT Committee, *Concluding Observations: Peru,* para. 23, U.N. Doc. CAT/C/PER/CO/4 (2006).

[24] *See* CEDAW Committee & CRC Committee, *Joint General Recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/General Comment No. 18 of the Committee on the Rights of the Child on harmful practices*, U.N. Doc. CEDAW/C/GC/31-CRC/C/GC/18 (2014).

[25] Convention on the Elimination of Discrimination Against Women, *adopted* Dec. 18, 1979, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, art. 2(f), U.N. Doc. A/34/46 (1979), 1249 U.N.T.S. 20378 (*entered into force* Sept. 3, 1981).

[26] *See* CEDAW Committee, *Gen. Recommendation No. 30*, *supra* note 15, para. 38.

[27] Rome Statute of the International Criminal Court, *adopted* July 17, 1998, United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, Italy, June 15 – July 17, 1998, arts. 7 and 8, *entered into force* July 1, 2002, U.N. Doc. A/CONF.183/9 (1998).

[28] *See* CRC Committee, *General Comment No. 5: General Measures of Implementation of the Convention on the Rights of the Child*, *(Arts. 4, 42 and 44, para. 6),* para. 24, U.N. Doc. CRC/GC/2003/5 (2003) [hereinafter CRC Committee, *Gen. Comment No. 5*]; General Assembly, Res. 60/147: Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, para. 23, U.N. Doc. A/RES/60/147 [hereinafter General Assembly, Res. 60/147]; CEDAW Committee, *Gen. Recommendation No. 32*, *supra* note 16, para. 37.

[29] *See* S.C. Res. 1325, U.N. Doc. S/RES/1325 (2000); S.C. Res. 1820, U.N. Doc. S/RES/1820 (2008); S.C. Res. 1888, U.N. Doc. S/RES/1888 (2009); S.C. Res. 1889, U.N. Doc. S/RES/1889 (2009); S.C. Res. 1960, U.N. Doc. S/RES/1960 (2010); S.C. Res. 2106, U.N. Doc. S/RES/2106 (2013); S.C. Res. 2122, U.N. Doc. S/RES/2122 (2013); S.C. Res. 2242, U.N. Doc. S/RES/2242 (2015).

[30] *See* OHCHR, Rape: Weapon of War (2008), http://www.ohchr.org/en/newsevents/pages/rapeweaponwar.aspx.

[31] S.C. Res 2242, preamble, U.N. Doc. *S*/RES/2242 (2015)

[32] *See* CEDAW Committee, *General Recommendation No. 33: On Women's Access to Justice*, para. 14, U.N. Doc. CEDAW/C/GC/33 (2015); OHCHR and Center for Economic and Social Rights, Who will be accountable? Human Rights and the Post-2015 Agenda (2013), *available at* http://www.ohchr.org/Documents/Publications/WhoWillBeAccountable.pdf.

[33] CRC Committee, *Gen. Comment No. 5*, *supra* note 28, para. 24; General Assembly, Res. 60/147, *supra* note 28, para. 23.

[34] CEDAW Committee, *Gen. Recommendation No. 30*, *supra* note 15, para. 79.

[35] *Id.*

[36] *Id.*, para. 15.

[37] *Id.*, para. 26.

[38] UN Women, *Preventing Conflict, Transforming Justice, Securing the Peace: A Global Study on the Implementation of the UNSC Resolution 1325*, at 347-351(2015), *available at* http://www.unwomen.org/~/media/files/un%20women/wps/highlights/unwglobal-study-1325-2015.pdf.