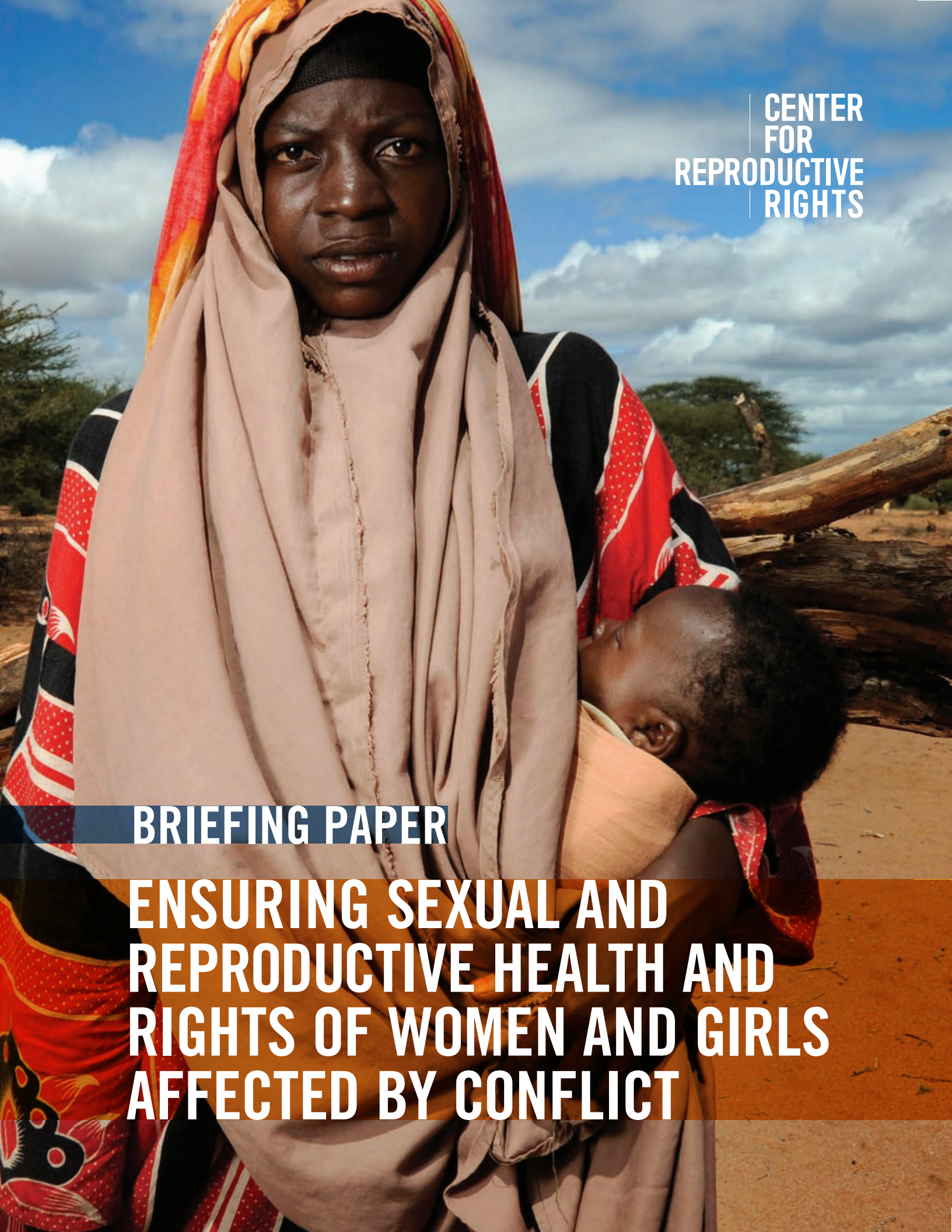

CENTER FOR REPRODUCTIVE RIGHTS

BRIEFING PAPER

ENSURING SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS OF WOMEN AND GIRLS AFFECTED BY CONFLICT

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I. INTRODUCTION

Conflict and crisis have dire consequences on women and girls' sexual and reproductive health and rights (SRHR). Women and girls affected by conflict[1] often have limited access to reproductive health care and are particularly vulnerable to sexual violence, human trafficking, and forced marriage.[2] In addition to being serious human rights violations, these abuses contribute to unintended pregnancies, and in turn can lead to high rates of unsafe abortion and maternal mortality.[3] As such, access to sexual and reproductive health information and services is critical in these settings, but disintegrating health systems, unsafe environments, prohibitive costs, lack of information and decision-making power, and fear of further violence for seeking out care all make it difficult for women and girls to access the necessary information and services.[4]

While the provision of sexual and reproductive health services for women and girls affected by conflict has improved in recent years, there remain significant gaps in the comprehensive and systematic delivery of these services.[5] Lack of access to services such as obstetric, prenatal, and post-natal care; contraceptive information and services, including emergency contraception; and safe abortion and post-abortion care, especially for

Ensuring the provision of sexual and reproductive health information and services is central to an effective humanitarian response and to fulfilling fundamental human rights and humanitarian law obligations.

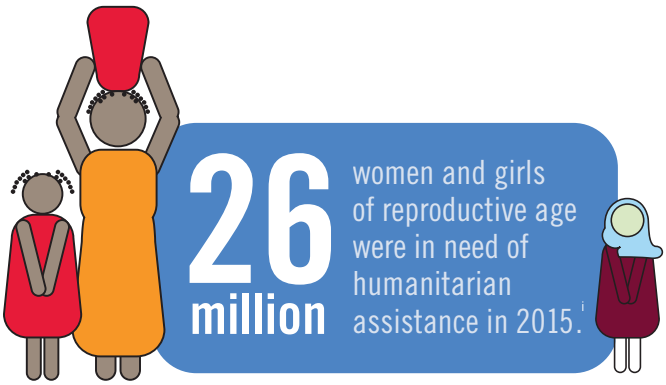
survivors of rape and sexual violence, negatively impact the health and lives of women and girls. Ensuring the provision of sexual and reproductive health information and services and accountability for sexual violence in these settings is central not only to an effective humanitarian response but also to fulfilling fundamental human rights and humanitarian law obligations. International jurisprudence, state practice, and academic literature have consistently affirmed that state obligations under international human rights law (IHRL) apply even during situations of armed conflict, operating complementarily to international humanitarian law (IHL) obligations.[6]

This briefing paper analyzes existing legal standards and principles relevant to protecting the sexual and reproductive health and rights of women and girls affected by conflict.[7] It provides an overview of reproductive rights violations often experienced by women and girls in these settings, including increased maternal mortality, lack of access to contraception, lack of access to safe abortion, and sexual and gender-based violence (SGBV), and concomitant state obligations to address these violations. It focuses on international human rights law and international humanitarian law but also provides brief analyses of other relevant legal regimes as well as key human rights principles relevant to humanitarian actors and other stakeholders. While recognizing that state practice and implementation in conflict and displacement settings often falls far short of these standards, this paper aims in part to raise awareness of the existence and nature of legal obligations and principles with the hope of contributing to their increased operationalization.

This briefing paper is intended to be a resource for advocates, humanitarian agencies and aid workers, service providers, policy-makers, and other key stakeholders working on the health and rights of women and girls affected by conflict to ensure that policies and programs reflect and prioritize human rights obligations and principles.

II. IMPACT OF CONFLICT ON WOMEN AND GIRLS' SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS

According to the United Nations High Commissioner for Refugees (UNHCR), there are more than 65 million forcibly displaced people throughout the world, 12.4 million of whom were newly displaced due to conflict or persecution in 2015.[8] The United Nations Population Fund (UNFPA) estimated that 26 million women and girls of reproductive age were in need of humanitarian assistance in 2015.[9] Women and girls affected by conflict include civilians and combatants in situations of armed conflict,[10] internally displaced persons (IDPs), and refugees or asylum-seekers in neighboring or third countries in settings ranging from refugee camps or informal camps to urban and rural settings or in transit.



Armed conflict has significant impacts on the lives of all individuals and particularly women and girls. In addition to the insecurity and risk of physical injury due to combat, armed conflict causes a breakdown of social networks and infrastructure, often leading to displacement or disruption in access to basic services and livelihoods.[11] Moreover, conflict tends to exacerbate existing patterns and structures of discrimination and inequalities,[12] and further undermines access to healthcare, housing, water, sanitation, education, and employment for women and girls in these settings.[13] In addition, women and girls are particularly at risk of sexual violence and exploitation in conflict and displacement settings.[14] 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.[15]

Maternal mortality ratios (MMRs) in countries affected by conflict remain high and have been shown to increase during periods of conflict. Syria's MMR has increased from 49 to 68 per 100,000 live births since the start of the conflict in 2011.[ii]

While there continues to be a need for more reliable data on maternal mortality in conflict and displacement settings, there is little doubt that conflict exacerbates maternal mortality.[16] In 2015, a United Nations (UN) inter-agency report found that in countries designated as fragile states, which include conflict-affected settings, the estimated lifetime risk of maternal mortality is 1 in 54, as compared to 1 in 180 global lifetime risk.[17] Moreover, maternal mortality ratios (MMRs) in countries affected by conflict remain high and have been shown to increase during periods of conflict. The Central African Republic has an MMR of 882 per 100,000 live births, which reflects improvement over the past 15 years but a slight increase since the start of the most recent period of unrest in 2013.[18] Similarly, Syria's MMR has increased from 49 to 68 per 100,000 live births since the start of the conflict in 2011.[19] Studies have found that MMRs among refugees receiving humanitarian aid tend to be lower than among the host population or country of origin, but that delays in seeking and receiving care are among the most significant factors in maternal deaths[20] – factors that are likely exacerbated for asylum seekers in transit.[21] A recent study conducted among Syrian refugee women in Lebanon found that many women experienced or perceived challenges in accessing reproductive health services, primarily due to costs, distance or transport to facilities, or fear of mistreatment, with more than 35% reporting problems during pregnancy or complications during labor, delivery, or abortion.[22]

One of the first things that women refugees ask for upon coming to Lebanon is family planning services.

– Cecilia Chami, Programs Director, Lebanon Family Planning Association for Development & Family Empowerment (LFPADE) – Lebanon

Access to contraceptives is fundamental to women's ability to exercise the right to decide freely and responsibly the number and spacing of children and is a key intervention for preventing maternal mortality. This access is even more important in conflict and displacement settings, given the increased risks related to pregnancy and delivery due to the unavailability or inaccessibility of maternal health services in these settings. However, according to a global evaluation of the Inter-Agency Working Group on Reproductive Health in Crises (IAWG), the provision of contraception, particularly long-acting methods and emergency contraception, continues to lag behind in reproductive health services in emergencies.[23] Among Syrian refugees in Lebanon, for example, one study found that only 34.5% were using a family planning method, as compared to 58.3% in pre-conflict Syria.[24] The U.S. Centers for Disease Control and Prevention report that only 1 in 3 Syrian women of reproductive age in the Zaatari refugee camp in Jordan are aware of available birth control options.[25] Actual or perceived requirements of third-party authorization also hinder access to contraceptives.[26]

Globally, unsafe abortion accounts for between 8-18% of maternal deaths, almost all of which occur in developing countries.[27] While there continues to be a lack of reliable data on unsafe abortion in humanitarian settings, the need for safe abortion services likely increases in these settings.[28]

Access to contraceptives is fundamental to women's ability to exercise the right to decide freely and responsibly the number and spacing of children and is a key intervention for preventing maternal mortality.

Women and girls affected by conflict may face increased risks of unintended pregnancy and unsafe abortion, due in part to lack of or interrupted access to contraceptives and increased risks of sexual violence and child, early, and forced marriage.[29] However, IAWG's global evaluation shows little improvement in the availability of safe abortion care in humanitarian settings.[30] For example, more than 200 women and girls rescued by the Nigerian Army from Boko Haram in 2015 were reported to have been pregnant as a result of serial rape or forced marriage; none were offered access to safe abortion, leading some of them to seek out illegal, unsafe abortions.[31]

Finally, women and girls affected by conflict face an increased risk of gender-based violence, including sexual violence and child, early, and forced marriage.[32] Sexual violence occurs within all conflict-affected settings, including war or conflict, during displacement, and in transit or refugee settings and is perpetrated by state actors, non-state actor groups, and private individuals.[33] Moreover, in some conflict settings, sexual violence is used as a tactic of war.[34] Non-state actor groups, such as the Islamic State, as well as state security forces in Syria have used sexual violence as a tactic of war and repression.[35] In some conflict settings, armed groups have created systems of forced marriage and sexual slavery.[36]

More than 200 women and girls rescued by the Nigerian Army from Boko Haram in 2015 were reported to have been pregnant as a result of serial rape or forced marriage; none were offered access to safe abortion.[iii]

In Nigeria, systematic sexual and gender-based violence has been a well-documented feature of Boko Haram's treatment of the women and girls it abducts, but data on the scope and extent of this violence remains difficult to obtain.[37] More reliable and comprehensive data on sexual violence in conflict and displacement settings is necessary,[38] though it continues to be difficult to collect due to stigma and other barriers associated with reporting these violations.[39] There is also a growing body of evidence to suggest rising rates of child, early, and forced marriage in conflict-affected settings due to a lack of economic resources and because families perceive marriage as a way to protect girls from other forms of violence, including sexual violence, the risk of which increases in these settings.[40] 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.[41]

In addition to lacking access to health 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 endured. Disintegrating judicial systems in conflict and displacement settings, 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 reporting sexual violence and seeking justice and accountability.

III. INTERNATIONAL LEGAL FRAMEWORKS

The rights of women and girls affected by conflict are protected by multiple, complementary bodies of international law, including international humanitarian law (IHL), international human rights law (IHRL), international criminal law, and refugee law. Developed to regulate and limit the effects of armed conflict, IHL applies only to situations of armed conflict[42] but it does not allow for derogation and its minimum standards are binding on all parties to a conflict (including non-state armed groups).[43] While IHL does not explicitly address women's reproductive health in any detail or depth, this body of law contains important obligations with respect to medical treatment as well as the treatment of women, and particularly pregnant women.[44] IHRL, on the other hand, has developed detailed and extensive guidance for states with respect to sexual and reproductive health and rights[45] and complements and reinforces IHL obligations in situations of armed conflict.[46] Despite differences in scope and approach, IHL and IHRL share some of the same aims; notably, both aim to protect dignity, life, and health and both prohibit discrimination and torture or cruel treatment.[47] Moreover, where IHL obligations are not spelled out in detail, IHRL and the interpretation of human rights bodies can help clarify analogous principles found in both bodies of law.[48] Human rights bodies have made clear that, with only some limited exceptions, a state's obligations extend to all individuals in its territory or under its effective control,[49] including refugees and asylum-seekers within its territory.[50] Although IHRL is generally thought to apply only to states (as distinct from IHL which applies to all parties to a conflict, including non-state actors), this view may be evolving.[51] This Part begins by setting out SRHR-related obligations under IHRL, then discusses complementary obligations under IHL, international criminal law, and refugee law.

International Human Rights Law

International legal and political bodies, including the International Court of Justice, have affirmed that fundamental human rights obligations, including economic, social, and cultural rights, continue to apply even during situations of armed conflict.[52] Although IHRL permits states to derogate from certain civil and political rights in times of armed conflict and to limit certain obligations with respect to economic, social, and cultural rights depending on resource availability,[53] human rights treaty bodies have emphasized that such derogations are subject to strict conditions and that certain minimum

core obligations are non-derogable.[54] Even where derogations are permitted, the measures taken cannot involve discrimination based solely on prohibited grounds, including sex.[55]

Sexual and reproductive health and rights are central to the realization of fundamental human rights, including the rights to life, health, freedom from torture and ill-treatment, privacy, education, and non-discrimination, among others; at the same time, SRHR are grounded in and draw their meaning from fundamental human rights.[56] Human rights bodies consistently have emphasized that states' obligations to guarantee SRHR require not only ensuring women and girls have access to comprehensive reproductive health information and services but also taking affirmative measures to improve reproductive health outcomes and to ensure that women and girls have the opportunity to make fully informed decisions about their sexuality and reproduction, free from violence, discrimination, and coercion.

Fundamental human rights obligations, including economic, social, and cultural rights, continue to apply even during situations of armed conflict.[iv]

As with other fundamental human rights obligations, obligations related to SRHR continue to apply in situations of armed conflict and displacement. The Committee on Economic, Social, and Cultural Rights (CESCR) interprets the right to sexual and reproductive health as including "the right to make free and responsible decisions and choices, free of violence, coercion and discrimination, over matters concerning one's body and sexual and reproductive health" as well as "unhindered access to a whole range of health facilities, goods, services and information, which ensure all people full enjoyment of the right to sexual and reproductive health under article 12 of the Covenant."[57] Noting that the Covenant's obligations continue to apply in situations of armed conflict, CESCR has recommended that states increase efforts to ensure sexual and reproductive health services for populations affected by conflict or displacement.[58] Minimum core obligations are obligations with which states are required to comply at all times; those related to the right to health include ensuring non-discriminatory, universal, and equitable access to sexual and reproductive health services and information, particularly for women and marginalized groups; providing essential medicines; and ensuring access to remedies for violations of SRHR.[59] Comparable to other non-derogable minimum core obligations is

the obligation to "ensure reproductive, maternal (pre-natal as well as post-natal) and child health care."[60]

The CEDAW Committee has found that the failure to provide services that only women require to meet their reproductive health needs is a form of discrimination[61] and has emphasized that state obligations under the Convention "are non-derogable and continue to apply during conflict situations."[62] For women and girls affected by conflict, the CEDAW Committee has recommended that state parties

> [e]nsure that sexual and reproductive health care includes access to sexual and reproductive health and rights information; psychosocial support; family planning services, including emergency contraception; maternal health services, including antenatal care, skilled delivery services, prevention of vertical transmission and emergency obstetric care; safe abortion services; post-abortion care; prevention and treatment of HIV/AIDS and other sexually transmitted infections, including post-exposure prophylaxis; and care to treat injuries such as fistula arising from sexual violence, complications of delivery or other reproductive health complications, among others.[63]

In addition to human rights treaty bodies, the UN Security Council has passed several resolutions in the past 15 years relating to women and armed conflict. Specifically, with regard to SRHR in conflict settings, the Security Council has urged "United Nations entities and donors to provide non-discriminatory and comprehensive health services, including sexual and reproductive health" to survivors of sexual violence.[64] The political body also noted "the need for access to the full range of sexual and reproductive health services, including regarding pregnancies resulting from rape, without discrimination" for women affected by armed conflict.[65] In addition to these specific references to SRHR, these resolutions affirm the applicability of states' human rights obligations in situations of armed conflict.

The following discussion highlights key human rights obligations related to specific SRHR violations described in Part II.

i. Maternal Health

International human rights law obligates states to 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.[66] Human rights bodies have provided detailed guidance on women and girls' right to maternal health care, which encompasses the full range of services in connection with pregnancy and the post-natal period and the ability to access these services free from

discrimination, coercion, and violence.[67] These bodies have called on states to address the social and other determinants of health, including the effects of conflict, to enable women and girls to access the maternal health services they need.[68] The CEDAW Committee has recognized that the failure to provide women with quality maternal health services violates the rights to equality and non-discrimination, as these are services that only women need.[69] Treaty bodies have linked high rates of maternal mortality to lack of access to reproductive health services, including contraception; unsafe abortion; adolescent pregnancy; and child marriage.[70]

In conflict-affected settings, the CEDAW Committee has explicitly called on states to ensure access to "maternal health services, including antenatal care, skilled delivery services, prevention of vertical transmission and emergency obstetric care . . . complications of delivery or other reproductive health complications, among others."[71] The Committee has interpreted the Convention to require "women seeking asylum and women refugees be granted, without discrimination, the right to . . . health care and other support, . . . appropriate to their particular needs as women."[72] In its recommendations to specific states, the CEDAW Committee has noted with concern the effects of armed conflict on SRHR and maternal mortality, in particular, calling on states affected by conflict to "accord priority to the provision of sexual and reproductive health services."[73] The CEDAW Committee also raised concerns about the restrictions imposed by the Syrian government that have forced women to give birth in unsafe conditions and recommended that the state "prioritize access to maternal health care services, including skilled delivery services for pregnant women irrespective of their area of residence."[74] As noted above, CESCR considers the obligation to ensure reproductive and maternal health care to be comparable to a minimum core obligation with which states must comply at all times.[75] In the context of a military occupation, CESCR has recommended "disciplinary action against checkpoint officials who are found responsible for unattended roadside births, miscarriages, and maternal deaths resulting from delays at checkpoints" and urgent measures to ensure "unrestricted access to adequate prenatal, natal and post-natal medical care."[76]

ii. Contraception/Emergency Contraception

International human rights treaty bodies have found that all individuals, including adolescents and youth, have the right to access contraceptive information and services as a means of preventing pregnancy and sexually transmitted infections.[77] All individuals have the right "to decide freely and responsibly on the number, spacing and timing of their children," which

“The situation of the IDP camps in northeast Nigeria leaves much to be desired. The ongoing neglect of major reproductive health needs, if not addressed, will likely escalate Nigeria's negative maternal health record.”

– Dr. Abiola Akiyode-Afolabi, Executive Director, Women Advocates Research and Documentation Center (WARDC) - Nigeria

includes the "right to be informed and to have access to safe, effective, affordable and acceptable methods of family planning."[78] States must ensure that contraceptives are affordable[79] and that a comprehensive range of good quality, modern, efficient contraceptives are available, including emergency contraception, as part of their core obligation under the right to health.[80] Access to contraceptives must not be hindered by legal restrictions or third party authorization requirements.[81] Treaty bodies have called on states not only to ensure access to contraceptive information and services but also to ensure positive contraception-related health outcomes for women and girls.[82] Restrictions on access to emergency contraception, in particular, may violate a number of rights, including the rights to health, non-discrimination, gender equality, and freedom from ill-treatment,[83] particularly for victims of violence, including adolescents.[84]

The CEDAW Committee has recognized that women often experience increased sexual violence in conflict, "which require[s] specific protective and punitive measures,"[85] and has explicitly called on states to ensure access to contraception, including emergency contraception, in conflict-affected settings.[86] Though not legally binding, the ICPD Programme of Action remains an influential political document, and in it states committed to provide refugees with access to health services, "including family planning."[87] The UN Secretary General has called for humanitarian responses to include access to safe emergency contraception for pregnancies resulting from rape.[88] Although specific language related to access to contraception in conflict-affected settings has been limited to date, human rights and political bodies have consistently affirmed the need to ensure that women and girls affected by conflict have access to the full range of sexual and reproductive health services and information,[89] which includes access to contraception.

iii. Abortion

International human rights treaty bodies and experts have consistently found that denying access to abortion or imposing barriers to access undermines women's reproductive autonomy and violates the rights to life, health, privacy, equality, and freedom from torture or ill-treatment. At minimum, states must ensure that abortion is both legal and accessible when a woman's life or health is at risk, in cases of rape and incest, and in cases of severe or fatal fetal anomalies[90] and provide humane, quality post-abortion care to women, regardless of whether abortion is legal.[91] Human rights bodies have urged states to interpret exceptions to restrictive abortion laws broadly to consider, for example, mental health conditions as a threat

to women's health,[92] as per the World Health Organization's definition of health.[93] The Committee on the Rights of the Child (CRC Committee) has called on states to decriminalize abortion to ensure that adolescent girls have access to safe abortion and post-abortion services, affirming adolescents' autonomy and decision-making in the context of their SRHR.[94]

The Committee Against Torture (CAT Committee) and Human Rights Committee have found that, in certain circumstances, denial of access to abortion services can lead to physical or mental suffering that amounts to ill-treatment.[95] The CAT Committee has expressed concern that complete bans on abortion may constitute torture or ill-treatment.[96] The CAT Committee also has urged states to ensure access to abortion for women whose health or life is at risk, who are the victims of sexual violence, or who are carrying a nonviable fetus – circumstances where a pregnancy may cause a women severe physical or mental suffering.[97] Similarly, the Human Rights Committee has found that the denial of access to abortion services can lead to physical or mental suffering amounting to torture or ill-treatment in certain circumstances.[98] Recently, the Human Rights Committee found that by criminalizing abortion and hence denying the petitioner an abortion, the state had violated her right to freedom from cruel, inhuman, or degrading treatment.[99] At the regional level, decisions from the European Court of Human Rights have underscored state obligations to ensure access in contexts where abortion is legal,[100] and the Maputo Protocol obligates states to ensure safe abortion "in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus."[101]

In its general recommendation on women in conflict, the CEDAW Committee urges states to "[e]nsure that sexual and reproductive health care includes access to… safe abortion services" and post-abortion care.[102] Human rights treaty bodies have raised concerns, in particular, about women raped in armed conflict and have found that the denial of safe abortion care to survivors of rape in armed conflict violates the rights to health and privacy and could amount to a violation of the prohibition on ill-treatment.[103] In its recommendations to Syria, the CEDAW Committee urged the state to "[e]xpand the grounds on which abortion is permitted to include, in particular, cases of rape, and prepare guidelines on post-abortion care to ensure that women who are pregnant as a result of rape have free access to safe abortion services."[104] Non-derogable minimum core obligations related to sexual and reproductive health require states to take steps to prevent unsafe abortion and to provide post-abortion care and counseling; they also require states to "repeal or eliminate laws, policies and practices

that criminalize, obstruct or undermine individual's or particular group's access to sexual and reproductive health facilities, services, goods and information."[105] The UN Secretary General has called for humanitarian responses to include access to safe abortion care for pregnancies resulting from rape,[106] and the UN Security Council has recognized the importance of including "access to the full range of sexual and reproductive health services" for women and girls affected by conflict, "including regarding pregnancies resulting from rape" as part of humanitarian aid and funding.[107]

iv. Sexual and Gender-based Violence

Sexual and gender-based violence (SGBV) impairs or nullifies the enjoyment of a range of human rights, including the rights to life, health, liberty and security of person, equal protection and equality in the family, and freedom from torture and cruel, inhuman, or degrading treatment, among others.[108] The CEDAW Committee has addressed in detail state obligations to prevent and address SGBV, particularly in the areas of domestic violence,[109] sexual violence,[110] and female genital mutilation, as well as other violations of sexual and reproductive health and rights.[111] The Human Rights Committee and the CAT Committee, moreover, have framed forms of gender-based violence, such as restrictions on access to abortion,[112] female genital mutilation,[113] abusive treatment in healthcare settings,[114] and involuntary sterilization, as violations of the prohibition on torture and cruel, inhuman, or degrading treatment. In addition, CESCR,[115] the CRC Committee,[116] and the Committee on the Rights of Persons with Disabilities[117] have made clear that states' obligations to address gender-based violence fall under their respective treaties. International human rights treaties have recognized the right to be free from harmful traditional practices,[118] finding that child, early, and forced marriage can violate the prohibition on torture or ill-treatment.[119] The CEDAW Committee and the CRC Committee refer to child, early, and forced marriage as a harmful practice that leads to SGBV, due to the increased risk of forced and early pregnancy, maternal mortality, and domestic violence.[120]

With the prevalence of sexual violence in conflict, human rights bodies increasingly have provided recommendations regarding gender-based violence experienced by women and girls. In its general recommendation on women in conflict, the CEDAW Committee urges states to prevent, investigate, and punish all forms of SGBV, particularly sexual violence committed both by state and non-state actors, and to ensure survivors' access to justice, comprehensive medical treatment, and psychosocial support.[121] The CEDAW Committee has urged states to decriminalize

abortion "more particularly in cases of rape perpetrated in the context of the conflict."[122] The Committee also calls on states to safeguard refugees and IDPs from SGBV, including child and forced marriage, and to provide them with immediate access to medical services and to create accountability mechanisms for SGBV in all displacement settings.[123]

International Humanitarian Law

Non-discrimination is a core principle of IHL, which prohibits adverse distinction based on sex, among other grounds.[124] As one commentator notes, "[t]his is a prohibition on discrimination and not on differentiation,"[125] as IHL also provides for specific protections for women and imposes obligations on parties to an armed conflict to respect women's specific needs.[126] Current interpretation of these needs encompasses protection from sexual violence as well as the need to ensure that women in conflict receive

medical treatment and adequate health services, including counseling.[127] The 2016 commentary of the International Committee of the Red Cross (ICRC) notes that this care must take into account "the distinct set of needs of and particular physical and psychological risks facing women, including those arising from social structures" and requires "equal respect, protection and care based on *all* the needs of women."[128] Moreover, the Geneva Conventions and Additional Protocol I require that parties to an armed conflict treat pregnant women and nursing mothers with particular care, including with respect to medical assistance.[129]

IHL establishes an affirmative duty to provide medical care for the wounded.[130] Additional Protocol I includes in its definition of the wounded and sick "maternity cases" and "other persons who may be in need of immediate medical assistance or care, such as… expectant mothers."[131] Victims of sexual violence, including rape, also fall within the protections provided for the wounded and sick in armed conflict situations.[132] As such,

at minimum, IHL establishes an obligation to provide medical care and attention to pregnant women and victims of sexual violence. The ICRC notes that this is an obligation of means, meaning that parties must make "best efforts" to fulfill it, including by permitting humanitarian organizations to assist.[133] With regard to the treatment of the sick and wounded, the prohibition on adverse distinction has been interpreted to permit distinction only on the basis of medical need.[134] The ICRC describes this IHL principle as similar to the human rights principle of non-discrimination,[135] suggesting that human rights law can provide additional guidance as to how this principle should be interpreted with respect to the medical treatment of women in conflict.

IHL also requires civilians and individuals no longer participating in hostilities (persons *hors de combat*), including the sick and wounded, to be treated humanely in all circumstances.[136] Although humane treatment is not defined in the Geneva Conventions, Common Article 3, which constitutes the minimum yardstick of treatment during armed conflict, specifically prohibits acts of torture and cruel treatment as well as humiliating and degrading treatment.[137] While rape and sexual violence are not explicitly prohibited under Common Article 3, other provisions in the Geneva Conventions and the Additional Protocols, as well as customary IHL, make clear that these acts are prohibited and constitute "violence to life and person" or "outrages upon personal dignity" or both and violate the fundamental guarantees of IHL to humane treatment.[138]

In describing the current interpretation of humane treatment, the ICRC explains that "the detailed rules found in international humanitarian law and human rights law give expression to the meaning of 'humane treatment.'"[139] The 2016 commentary notes that "[s]ensitivity to the individual's inherent status, capacities and needs, including how these differ among men and women due to social, economic, cultural and political structures in society, contributes to the understanding of humane treatment under common Article 3."[140] For fundamental IHL guarantees, including humane treatment, human rights law and the interpretation of human rights bodies can clarify analogous IHL principles.[141] As such, interpretation and guidance from human rights bodies regarding torture and cruel, inhuman, or degrading treatment can help define the contours of humane treatment.[142] Some human rights treaty bodies have found that the denial of medical treatment, including the denial of access to safe abortion services, may constitute ill-treatment in certain circumstances, including when a woman's life or health is at risk, in cases of severe or fatal fetal anomalies, and in cases of rape and incest.[143] More recently,

Human Rights and Non-State Actors

Traditionally applicable only to states, international human rights law is evolving to create obligations for non-state actors. The CEDAW Committee's General Recommendation No. 30, which sets forth states' obligations to respect, protect, and fulfill 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 elaborates on states' due diligence obligation to hold non-state actors accountable for crimes perpetrated against women.[v] Importantly, it also notes that non-state actors may, in certain circumstances, be obligated to respect international human rights.[vi]

The UN Security Council also has recognized the applicability of IHRL to non-state groups by stating that it condemns the human rights violations and acts of violence committed by non-state actors.[vii] International fact-finding commissions and inquiries have concluded that non-state armed groups have both IHL and IHRL obligations.[viii] The UN Secretary General's Special Representative on Sexual Violence in Conflict has made a concerted effort to marshal support for holding non-state actors accountable for violations of international law, including international human rights law.[ix]

some political bodies have begun to interpret Common Article 3 to require the provision of abortion services to survivors of rape in armed conflict.[144] Taken together, guidance from human rights bodies and these political bodies suggests increasing support for providing access to abortion for women and girls affected by conflict at least in these circumstances.

IHL also imposes obligations on state parties that are not parties to a conflict. All state parties are obligated to establish universal jurisdiction over grave breaches to the Geneva Conventions, which include torture and inhuman treatment.[145] Moreover, Common Article 1 to the Geneva Conventions obligates all state parties "to undertake to respect and to ensure respect" for the conventions.[146] The 2016 ICRC Commentary states that "[t]his obligation is not limited to stopping ongoing violations but includes an obligation to prevent violations when there is a foreseeable

risk that they will be committed and to prevent further violations in case they have already occurred."[147] As the content of this positive obligation continues to evolve,[148] there may be additional avenues to press third states, including donor states, to take affirmative steps to prevent and stop IHL violations, such as acts of torture or inhuman treatment, by parties to an armed conflict.

International Criminal Law

International criminal law has also evolved to contain provisions relevant to SRHR for women and girls affected by conflict, specifically with regard to sexual violence. International criminal tribunals have developed a body of law imposing individual criminal responsibility for the commission of sexual violence crimes,[149] and the Office of the Prosecutor of the International Criminal Court (ICC) has acknowledged sexual and gender-based crimes as "amongst the gravest under the Statute [of the ICC]."[150] Significantly, individuals, including individuals associated with non-state actors, can be prosecuted for international crimes.[151] The ICC Statute defines the scope of rape and sexual violence that constitute crimes against humanity or war crimes.[152] Sexual violence can also constitute an act of genocide if committed with the specific intent to destroy, in whole or in part, a particular group.[153] The jurisprudence of special tribunals continues to evolve in this area. The Statute of the International Criminal Tribunal for Rwanda provides for the prosecution of rape, sexual violence, and torture as genocide, crimes against humanity, or war crimes.[154] The Statute of the Special Court for Sierra Leone includes rape, sexual slavery, enforced prostitution, forced pregnancy, and any other form of sexual violence among the constituent elements of crimes against humanity, and the Court also has found forced marriage to constitute a crime against humanity.[155] The ICC issued its first conviction for sexual violence crimes in 2016, convicting Jean-Pierre Bemba Gombo for his responsibility as commander-in-chief for rape committed by soldiers under his command in the Central African Republic.[156]

Refugee Law

International refugee law[157] also includes protections relevant to women and girls affected by conflict.[158] The 1951 Refugee Convention protects the rights of refugees to fundamental human rights, including the right to education, access to justice, and employment.[159] As part of the ICPD, states recognized that refugee women and girls are entitled to the same treatment

as nationals with regard to public relief and assistance.[160] International human rights bodies and UNHCR have made clear that economic, social, and cultural rights obligations extend to refugees.[161] UNHCR notes,

> Every refugee should have access to medical care. Every adult refugee should have the right to work. No refugee child should be deprived of schooling. In certain circumstances, such as large-scale inflows of refugees, asylum states may feel obliged to restrict certain rights, such as freedom of movement, the freedom to work, or proper schooling for all children. Such gaps should be filled, wherever possible, by the international community.[162]

CEDAW also grants special protection to those who have been displaced or rendered stateless or have become refugees or asylum seekers.[163] Similarly, CESCR and the CRC Committee have called on states to take into account the particular health needs of displaced and refugee women and girls.[164] As noted by the Special Rapporteur on the human rights of internally displaced persons on his most recent mission to Syria, "[f]or internally displaced persons, access to health care is particularly difficult and challenges are faced by those who are most vulnerable, including pregnant women, persons with disabilities or chronic illnesses, older persons, and children."[165] The Guiding Principles on Internal Displacement also call for special attention to be paid to the health needs of displaced women.[166]

IV. KEY HUMAN RIGHTS PRINCIPLES

In conflict-affected settings, where state institutions are weakened, overwhelmed, or not functioning, humanitarian organizations play an important role in ensuring the provision of basic services and goods.[167] In addition to the legal obligations detailed above, human rights principles are critical to ensuring that humanitarian funding, programs, and policies are driven by, benefiting, and accountable to the individuals most directly affected by them. Principles of equality and non-discrimination, participation, transparency, and accountability are foundational to international human rights law and are necessary to guide and inform all aspects of humanitarian service provision to ensure that it reflects and meets the needs of the individuals and communities most directly affected.[168]

Human rights principles are critical to ensuring that humanitarian funding, programs, and policies are driven by, benefiting, and accountable to the individuals most directly affected by them.

Principles of non-discrimination and equality are central to ensuring that humanitarian programs and policies recognize and address the root causes of sexual violence and SRHR violations in conflict or displacement settings to better prevent and eradicate these practices.[169] Aid efforts guided by the principles of non-discrimination and equality, moreover, prioritize the needs of marginalized or vulnerable groups or individuals.[170] To ensure that programs are accessible to the most vulnerable requires agencies and donors to monitor and collect data disaggregated on a number of different grounds, including, but not limited to, gender, age, ethnicity, religion, and geographic location.[171]

Meaningful participation of women and girls affected by conflict, particularly those from vulnerable or marginalized groups, is a key priority in all stages of humanitarian response, from the development to the implementation, monitoring, and evaluation of service policies and programs. A human-rights based approach recognizes the agency of affected individuals to participate in, shape, and make decisions regarding programs and

policies that are intended to be for their benefit.[172] As part of the ICPD, states acknowledged that reproductive health programming "must involve women in the leadership, planning, decision-making, management, implementation, organization and evaluation of service,"[173] which the UN Security Council also has affirmed in the context of humanitarian aid programs.[174] As noted by the Special Rapporteur on Health, "[i]nvolvement in decision-making processes empowers affected communities and ensures ownership of decisions and resources, which leads to sustainable systems and, potentially, the resolution of conflicts."[175] Effective and meaningful participation, in turn, rests on the ability of affected individuals to have access to reliable SRHR-related information as well as transparency regarding humanitarian funding decisions and structures.[176]

A human rights-based approach also prioritizes a broad and robust understanding of accountability to ensure that policymakers, decision-makers, and others who have an impact on affected individuals and communities are held responsible for their actions and decisions and that individuals whose rights have been violated have access to remedies. Effective accountability mechanisms require participation and transparency as well as the ability to confer meaningful and effective remedies to victims of violations on a basis of non-discrimination.[177] International human rights and political bodies have recognized that accountability requires prompt investigation into violations and punishment of perpetrators as well as legal and policy shifts in order to prevent future violations.[178] Remedies, moreover, must aim to restore the rights of victims of violations and must include adequate, effective, and prompt reparation, forms of which include restitution, compensation, rehabilitation (e.g. medical or psychological services), satisfaction, and guarantees of non-repetition.[179] As OHCHR has noted in its technical guidance on maternal mortality, human rights accountability entails multiple forms of monitoring, review, and oversight, including administrative, social, political and legal, and accountability for multiple actors within the system.[180] Examples of social accountability include "community-based oversight of finances and quality of care at points of service provision, including 'community scorecards.'"[181]

These fundamental principles must drive and guide all aspects of humanitarian funding, programs, and policies in conflict-affected settings to ensure effectiveness, sustainability, and the fulfillment of the needs and rights of those most directly affected.

V. CONCLUSION

Conflict and displacement have significant consequences for the lives and health of women and girls. Women and girls in these settings often face limited access to reproductive health care and are particularly vulnerable to sexual violence, human trafficking, and forced marriage. Despite some improvements in recent years in some areas, there remain significant gaps in the comprehensive and systematic access to obstetric, prenatal, and post-natal care; contraceptive information and services, including emergency contraception; and to safe abortion and post-abortion care, especially for survivors of rape and sexual violence.

As this briefing paper illustrates, women and girls affected by conflict or displacement are protected by multiple international legal frameworks. Notably, IHRL, which continues to apply in situations of armed conflict and displacement, provides important and detailed protections related to SRHR that complement and reinforce obligations under IHL. Ensuring the provision of comprehensive sexual and reproductive health information and services and accountability for sexual violence is central to an effective humanitarian response as well as to fulfilling fundamental legal obligations, including those under IHRL.

It is critical for states, including those affected by conflict, those hosting refugees, and donor states, to prioritize sexual and reproductive health and rights by ensuring access to maternal health care, contraception, safe abortion care, post-abortion services, and remedies for violations in these settings, including for survivors of sexual violence. Moreover, states, relevant agencies, and humanitarian organizations should work together to allocate adequate resources to gather reliable data on the provision of sexual and reproductive health services and sexual violence to ensure that humanitarian interventions reflect the situation and needs of women and girls affected by conflict or displacement. States should be held accountable for all of their legal obligations, including those under IHRL, and humanitarian service providers should aim to ensure that programs and policies are developed, implemented, and monitored in accordance with human rights principles.

Endnotes

1 This paper focuses on the rights and needs of women and girls affected by conflict, a category which includes refugees, internally displaced persons, as well as those individuals in or fleeing from active armed conflict settings. *See* International Committee of the Red Cross (ICRC), *Addressing the Needs of Women Affected by Armed Conflict* 9 (March 2004), *available at* https://www.icrc.org/eng/assets/files/other/icrc_002_0840_women_guidance.pdf (emphasizing the need to respond to the specific needs of women and girls affected by conflict regardless of whether they are "combatants, persons deprived of their freedom, refugees, internally displaced persons (IDPs), mothers and/or members of the civilian population"); *see also* Laurel Schreck, *Turning Point: A Special Report on the Refugee Reproductive Health Field*, 26:4 International Family Planning Perspectives 162 (Dec. 2000), *available at* https://www.guttmacher.org/sites/default/files/article_files/2616200.pdf (noting the importance of ensuring reproductive health services across stages of displacement). Not all women and girls in displacement and refugee settings have been affected by conflict, but by no means does the focus of this paper suggest that the obligations applicable to displacement settings, including international human rights law or refugee law, are limited to individuals affected by conflict.

2 United Nations Population Fund (UNFPA), State of World Population 2015: Shelter from the Storm 38-40 (2015), *available at* https://www.unfpa.org/sites/default/files/sowp/downloads/State_of_World_Population_2015_EN.pdf [hereinafter UNFPA, Shelter from the Storm]. *See also* CRR and UNFPA, Reproductive Rights: A Tool for Monitoring State Obligations (2013), *available at* http://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/crr_Monitoring_Tool_State_Obligations.pdf.

3 UNFPA, Shelter from the Storm, *supra* note 2, 38-40.

4 *See id.*

5 *See* Inter-Agency Working Group on Reproductive Health in Crises, *Taking Stock of Reproductive Health in Humanitarian Settings: Key Findings from the IAWG on Reproductive Health in Crises' 2012-2014 Global Evaluation* (2015), *available at* http://iawg.net/wp-content/uploads/2016/08/IAWG-GE-Summary_English.pdf; UNFPA, Shelter from the Storm, *supra* note 2; World Health Organization (WHO), United Nations Population Fund (UNFPA), and Escuela Andaluza de Salud Pública, Sexual and Reproductive Health During Protracted Crises and Recovery: Granada Report 2 (2011), *available at* http://www.searo.who.int/entity/emergencies/documents/sexual_reproductive_health_protractedcrises_and_recovery.pdf?ua=1.

6 *See* Part III *infra*.

7 While the focus of this paper is on women and girls, men and boys affected by conflict also experience difficulties in accessing health services and information, harm to their reproductive health, and increased risk of sexual violence. *See* Wynne Russell, *Sexual violence against men and boys*, 27 Forced Migration Review 22 (2007), *available at* http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/FMRpdfs/FMR27/12.pdf; International Center for Transitional Justice (ICTJ), When No One Calls It Rape: Addressing Sexual Violence Against Men and Boys (Dec. 8, 2016), *available at* https://www.ictj.org/sites/default/files/ICTJ_Report_SexualViolenceMen_2016.pdf; Allan Ngari, *Male Victims of Sexual Violence: war's silent sufferers*, Institute for Security Studies (June 10, 2016), *available at* https://issafrica.org/iss-today/male-victims-of-sexual-violence-wars-silent-sufferers.

8 United Nations High Commissioner for Refugees, Global Trends: Forced Displacement in 2015, at 02 (2016).

9 UNFPA, Shelter from the Storm, *supra* note 2, at 63; *see also* HRH Princess Sarah Zeid of Jordan and Dr. Flavia Bustreo, *Leave no one behind: Women, children and adolescent health in emergencies*, WHO Commentary (May 13, 2016), http://who.int/life-course/news/commentaries/women-children-adolescents-in-emergencies/en/.

10 *See* Charlotte Lindsey, *Women Facing War: ICRC Study on the Impact of Armed Conflict on Women* 23-27, ICRC (October 2001), *available at* https://www.icrc.org/eng/assets/files/other/icrc_002_0798_women_facing_war.pdf. The experiences of female combatants reflect "a clear gender component," and these women and girls often face many of the same risks, including sexual violence and child, early, or forced marriage, as civilians. *See, e.g.*, Carole Mann, *Women in Combat: Identifying Global Trends*, *in* Female Combatants in Conflict and Peace: Challenging Gender in Violence and Post-Conflict Reintegration (Seema Shekhawat, ed.) (2015). *See also* Kristin Williams, *Women in armed groups are more than just an exotic novelty*, PRI (June 28, 2015, 12:32 PM), https://www.pri.org/stories/2015-06-28/women-armed-groups-are-more-just-exotic-novelty.

11 ICRC, *Women and War* (June 2015), *available at* https://www.icrc.org/en/publication/0944-women-and-war.

12 U.N. Secretary General, *Report of the Secretary-General on women, peace and security*, paras. 5-7, U.N. Doc. S/2002/1154 (Oct. 16, 2002) [hereinafter 2002 SG report on women, peace and security].

13 ICRC, *Addressing the Needs of Women Affected by Armed Conflict* 47-74 (2004), https://www.icrc.org/eng/assets/files/other/icrc_002_0840_women_guidance.pdf.

14 ICRC, *Women and War*, *supra* note 11; 2002 SG report on women, peace and security, *supra* note 12, paras. 5-7. Men and boys are also vulnerable to sexual violence and exploitation in conflict or displacement settings. *See supra* note 7 (collecting sources).

15 UNFPA, Shelter from the Storm, *supra* note 2, at 43-44, 68.

16 *See, e.g.*, Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health, *Rep. on the right to health*, para. 43, U.N. Doc. A/68/297 (Aug. 9, 2013) (by Anand Grover) [hereinafter SR Health Report (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/.

17 WHO, UNICEF, UNFPA, World Bank Group, and the United Nations Population Division, Trends in Maternal Mortality: 1990 to 2015, at 15, 26 (2012), *available at* http://apps.who.int/iris/bitstream/10665/194254/1/9789241565141_eng.pdf.

18 WHO, UNICEF, UNFPA, World Bank Group, and the United Nations Population Division, Trends in Maternal Mortality: 1990 to 2015, *Maternal Mortality Ratio (model estimate, per 100,000 live births): Central African Republic*, *available at* http://data.worldbank.org/indicator/SH.STA.MMRT?locations=CF (last visited May 31, 2017).

19 WHO, UNICEF, UNFPA, World Bank Group, and the United Nations Population Division, Trends in Maternal Mortality: 1990 to 2015, *Maternal Mortality Ratio (model estimate, per 100,000 live births): Syrian Arab Republic*, *available at* http://data.worldbank.org/indicator/SH.STA.MMRT?locations=SY (last visited May 31, 2017).

20 Michelle Hynes, Ouahiba Sakani, Paul Spiegel, and Nadine Cornier, *A Study of Refugee Maternal Mortality in 10 Countries, 2008-2010*, 38:4 International Perspectives on Sexual and Reproductive Health 205, 210 (Dec. 2012) (noting that these ratios may be lower for a number of reasons, including as a result of targeted humanitarian care, but that these findings "should be interpreted with caution" as maternal deaths were likely underreported).

21 Moreover, studies noting the correlation between maternal stress, pregnancy-related complications, and fetal development suggest longer-term, intergenerational effects of conflict and displacement. *See, e.g.*, Delan Devakumar, Marion Birch, David Osrin, Egbert Sondorp, and Jonathan CK Wells, *The intergenerational effects of war on the health of children*, 12:57 BMC Medicine (Apr. 2014), *available at* https://bmcmedicine.biomedcentral.com/articles/10.1186/1741-7015-12-57; E.J.H Mulder *et al.*, *Prenatal maternal stress: effects on pregnancy and the (unborn) child*, 70 Early Human Development 3 (June 2002); Lucy Ward, *Mother's stress harms fœtus, research shows*, The Guardian (May 31, 2007), https://www.theguardian.com/science/2007/may/31/childrensservices.medicineandhealth.

22 Amelia Reese Masterson, Jinan Usta, Jhumka Gupta, and Adrienne S Ettinger, *Assessment of reproductive health and violence against women among displaced Syrians in Lebanon*, 14:25 BMC Women's Health 4 (2014), *available at* http://bmcwomenshealth.biomedcentral.com/articles/10.1186/1472-6874-14-25.

23 Sarah K Chynoweth, *Advancing reproductive health on the humanitarian agenda: the 2012-2014 global review*, 9 (Suppl 1):I1 Conflict and Health 7 (2014), *available at* http://iawg.net/wp-content/uploads/2016/08/IAWG-Global-Evaluation-2012-2014-1.pdf [hereinafter IAWG 2012-2014 Global Evaluation]; *see also* Sara E. Casey, *Evidence for the implementation of contraceptive services in humanitarian settings*, Columbia University Academic Commons (2016), *available at* http://dx.doi.org/10.7916/D8K937MH.

24 Masterson *et al.*, *supra* note 22, at 3. While these figures do not necessarily capture unmet need for contraceptives, the precipitous drop suggests more than changing desires to begin childbearing. *See* R.A. Spencer *et al.*, *Gender Based Violence Against Women and Girls Displaced by the Syrian Conflict in South Lebanon and North Jordan: Scope of Violence and Health Correlates* 12, Alianza por la Solidaridad (2015), *available at* http://data.unhcr.org/syrianrefugees/download.php?id=11650.

25 Centers for Disease Control and Prevention, Healthcare Access and Health Concerns among Syrian Refugees Living in Camps or Urban Settings Overseas (Jan. 10, 2017), *available at* https://www.cdc.gov/immigrantrefugeehealth/profiles/syrian/healthcare-diet/index.html.

[26] WHO and UNFPA, Ensuring human rights within contraceptive delivery: implementation guide 8 (2015), *available at* http://apps.who.int/iris/bitstream/10665/158866/1/9789241549103_eng.pdf.

[27] Guttmacher Institute, *Induced Abortion Worldwide* 2 (May 2016), *available at* https://www.guttmacher.org/fact-sheet/induced-abortion-worldwide. *See also* Therese McGinn and Sara E. Casey, *Why don't humanitarian organizations provide safe abortion services?*, 10:8 Conflict and Health (March 2016), *available at* https://conflictandhealth.biomedcentral.com/articles/10.1186/s13031-016-0075-8.

[28] McGinn and Casey, *supra* note 27, at 2.

[29] *Id*.

[30] IAWG 2012-2014 Global Evaluation, *supra* note 23, at 9.

[31] *See, e.g.*, Laura Bassett, *Instruments of Oppression*, Huffington Post (2015), *available at* http://highline.huffingtonpost.com/articles/en/kenya-abortion/.

[32] WHO, World Report on Violence and Health 147-174 (2002), *available at* http://apps.who.int/iris/bitstream/10665/42495/1/9241545615_eng.pdf. Gender-based violence includes sexual violence, including rape, sexual abuse, sexual exploitation, and forced prostitution; domestic and intimate partner violence; child, early, and forced marriage and other harmful traditional practices such as female genital mutilation/cutting, so-called honor crimes; human trafficking, including sex trafficking, child trafficking, and labor trafficking; denial of resources and lack of opportunities based on gender, sexual orientation, and/or gender identity; and, harmful acts based on sexual orientation and/or gender identity. *See also* Inter-Agency Standing Committee, Guidelines for Integrating Gender-Based Violence Interventions in Humanitarian Action 12 (2015), *available at* https://gbvguidelines.org/wp-content/uploads/2015/09/2015-IASC-Gender-based-Violence-Guidelines_lo-res.pdf. The focus of this paper is on women and girls, but men and boys are also at increased risk of sexual violence in conflict-affected settings. *See supra* note 7.

[33] As the Committee on the Elimination of Discrimination Against Women (CEDAW Committee) has acknowledged, "Conflicts exacerbate existing gender inequalities, placing women at a heightened risk of various forms of gender-based violence by both State and non-State actors. Conflict-related violence happens everywhere, such as in homes, detention facilities and camps for internally displaced women and refugees; it happens at any time, for instance, while performing daily activities such as collecting water and firewood or going to school or work." CEDAW Committee, *General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations*, para. 34, U.N. Doc. CEDAW/C/GC/30 (2013) [hereinafter CEDAW Committee, *Gen. Recommendation No. 30*].

[34] *See* S.C. Res. 1820, U.N. Doc. S/RES/1820 (June 19, 2008); U.N. Office of the High Commissioner for Human Rights (OHCHR), Rape: Weapon of War (2008), http://www.ohchr.org/EN/NewsEvents/Pages/RapeWeaponWar.aspx.

[35] U.N. Human Rights Council, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, paras. 59-63, U.N. Doc. A/HRC/28/69 (Feb. 5, 2015); *Syria: Sexual Assault in Detention*, Human Rights Watch (June 15, 2012), https://www.hrw.org/news/2012/06/15/syria-sexual-assault-detention; U.N. Special Representative of the Secretary-General for Sexual Violence in Conflict, Remarks on the Syrian Arab Republic based on the Report of the Secretary-General to the Security Council (S/2015/203) (Mar. 23, 2015), http://www.un.org/sexualviolenceinconflict/countries/syrian-arab-republic/.

[36] *See, e.g.*, U.N. Human Rights Council, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, U.N. Doc. A/HRC/S-17/2/Add.1 (Nov. 23, 2011); U.N. Human Rights Council, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, "They came to destroy": ISIS Crimes Against the Yazidis*, U.N. Doc. A/HRC/32/CRP.2 (June 15, 2016); Human Rights Watch, "Those Terrible Weeks in their camp": Boko Haram Violence against Women and Girls in Northeast Nigeria (Oct. 27, 2014), *available at* https://www.hrw.org/report/2014/10/27/those-terrible-weeks-their-camp/boko-haram-violence-against-women-and-girls; Human Rights Watch, "Our Rights are Fundamental to Peace" (Aug. 13, 2015), *available at* https://www.hrw.org/sites/default/files/supporting_resources/our_rights_are_fundamental_to_peace.pdf.

[37] Elizabeth J. Rushing, Joe Read, *Nigeria: multiple displacement crises overshadowed by Boko Haram*, Internal Displacement Monitoring Centre (Dec. 9, 2014), *available at* http://www.internal-displacement.org/sub-saharan-africa/nigeria/2014/nigeria-multiple-displacement-crises-overshadowed-by-boko-haram.

[38] Tia Palermo and Amber Peterman, *Undercounting, over-counting, and the longevity of flawed estimates: statistics on sexual violence in conflict*, 89 Bulletin of the World Health Organization (July 2011), *available at* http://www.who.int/bulletin/volumes/89/12/11-089888/en/.

[39] 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." 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.

[40] 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.

[41] 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.

[42] Even in situations of armed conflict, not all violations that occur are connected to the armed conflict taking place; in situations involving criminal acts not connected to the conflict, for example, domestic law and IHRL, rather than IHL, would continue to govern. *See* ICRC, Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, art. 3, para. 460, (2d ed. 2016), https://ihl-databases.icrc.org/ihl/full/GCI-commentary [hereinafter ICRC, 2016 Commentary on the First Geneva Convention]; U.N. Office of the High Commissioner for Human Rights (OHCHR), International Legal Protection of Human Rights in Armed Conflict 62 (2011), *available at* http://www.ohchr.org/Documents/Publications/HR_in_armed_conflict.pdf [hereinafter OHCHR, Human Rights in Armed Conflict].

[43] IHL is based on treaties, in particular the four Geneva Conventions and their Additional Protocols, as well as an evolving body of customary law that is binding on all states and parties to a conflict. *See* Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 75 U.N.T.S. 31 [hereinafter Geneva Convention I]; Geneva Convention for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea, Aug. 12, 1949, 75 U.N.T.S. 85 [hereinafter Geneva Convention II]; Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949 [hereinafter Geneva Convention III]; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949 [hereinafter Geneva Convention IV]; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflict (Protocol I), June 8, 1977, 1125 U.N.T.S. 3 [hereinafter Additional Protocol I]; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), June 12, 1977, 1125 U.N.T.S. 609 [hereinafter Additional Protocol II]; ICRC, Customary IHL Database, https://ihl-databases.icrc.org/customary-ihl/eng/docs/home (last visited June 2, 2017). IHL provides for different sets of rules depending upon whether the conflict is classified as an international armed conflict (IAC) between states or a non-international armed conflict (NIAC), but customary IHL has evolved to provide a minimum set of rules applicable to both IAC and NIAC. ICRC, Overview: Customary International Humanitarian Law (Oct. 29, 2010), https://www.icrc.org/eng/war-and-law/treaties-customary-law/customary-law/overview-customary-law.htm. The treaty-based provisions specific to NIAC and applicable to all parties to a conflict, including non-state groups, are found in Common Article 3 of the Geneva Conventions and Additional Protocol II to the Geneva Conventions. *See* Geneva Convention IV, art. 3; Additional Protocol II; *see also* ICRC, 2016 Commentary on the First Geneva Convention, *supra* note 42, art. 3, paras. 131-32.

[44] *See* Part III.b *infra*.

[45] *See generally* Center for Reproductive Rights, Breaking Ground (2016), *available at* https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/GLP_TMB_Booklet_2016_Web.pdf; Center for Reproductive Rights, Reproductive Rights are Human Rights (2009), *available at* https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/RRareHR_final.pdf [hereinafter Center for Reproductive Rights, Reproductive Rights are Human Rights].

[46] It is now widely accepted that IHL and IHRL are complementary and mutually reinforcing bodies of law in situations of armed conflict. *See* Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J., para. 22 (July 8); Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J., para. 106 (July 9); Human Rights Committee, *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, para. 11, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004) [hereinafter Human Rights Comm., *Gen. Comment No. 31*] (noting that "in respect to certain [ICCPR] rights, more specific rules of international humanitarian law may be specially relevant for the purposes of the interpretation of Covenant

rights, both spheres of law are complementary, not mutually exclusive"); *see also* OHCHR, Human Rights in Armed Conflict, *supra* note 42, at 5-6; Philip Alston, Jason Morgan-Foster, and William Abresch, *The Competence of the UN Human Rights Council and its Special Procedures in relation to Armed Conflicts: Extrajudicial Executions in the 'War on Terror'*, 19 EUR. J. OF INT'L L. 183, 197 (2008) (marshaling support for the complementarity of IHL and IHRL from multiple legal and political bodies). An apparent conflict between IHL and IHRL norms requires a context-specific analysis to determine the *lex specialis*, or most specific regulation applicable to that situation. OHCHR, Human Rights in Armed Conflict, *supra* note 42, at 61.

47 OHCHR, Human Rights in Armed Conflict, *supra* note 42, at 40; *see also* ICRC, *International Humanitarian Law and International Human Rights Law: Similarities and Differences* (January 2003), *available at* https://www.icrc.org/en/download/file/1402/ihl-and-ihrl.pdf.

48 ICRC, Customary IHL Database, *Introduction to Fundamental Guarantees*, https://www.icrc.org/customary-ihl/eng/docs/v1_rul_intofugu (last visited May 31, 2017).

49 CEDAW Committee, *Gen. Recommendation No. 30*, *supra* note 33, para. 22; CESCR, *General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, para. 30, U.N. Doc. E/C.12/GC/20 (2009) [hereinafter CESCR, *Gen. Comment No. 20*]; *Programme of Action of the International Conference on Population and Development*, Cairo, Egypt, Sept. 5-13, 1994, U.N. Doc. A/CONF.171/13/Rev.1 (1995) [hereinafter *ICPD Programme of Action*].

50 CEDAW Committee, *General Recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, para. 12, U.N. Doc. CEDAW/C/GC/28 (2010) [hereinafter CEDAW Committee, *Gen. Recommendation No. 28*]; CEDAW Committee, *General Recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women*, para. 7, U.N. Doc. CEDAW/C/GC/32 (2014) [hereinafter CEDAW Committee, *Gen. Recommention No. 32*]; CESCR, *Concluding Observations: Israel*, para. 31, U.N. Doc. E/C.12/1/Add.90 (2003). A state's obligations also run extraterritorially to individuals or territory under its effective control. *See* Human Rights Comm., *Gen. Comment No. 31*, *supra* note 46, para. 10; CAT Committee, *Concluding Observations: USA*, paras. 14-15, U.N. Doc. CAT/C/USA/CO/2 (2006); I.C.J. Advisory Opinion – Construction of a Wall in Occupied Palestinian Territory, *supra* note 46, paras. 111-113.

51 *See* Human Rights and Non-State Actors, p. 25 infra.

52 *See* Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J., para. 136 (July 9); Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J., para. 25 (July 8); S.C. Res. 2122, preamble, U.N. Doc. S/RES/2122 (Oct. 18, 2013) [hereinafter S.C. Res. 2122]; S.C. Res. 1325, para. 9, U.N. Doc. S/RES/1325 (Oct. 31, 2000).

53 Human Rights Committee, *General Comment No. 29: Article 4: Derogations during a State of Emergency*, para. 1, U.N. Doc. CCPR/C/21/Rev.1/Add.11 (2001) [hereinafter Human Rights Committee, *Gen. Comment No. 29*]; OHCHR, Human Rights in Armed Conflict, *supra* note 42, at 10. State obligations with respect to economic, social, and cultural rights, including the right to health, are subject to progressive realization, though states are obligated to take steps to the maximum of available resources to fully realize these rights. International Covenant on Economic, Social and Cultural Rights, *adopted* Dec. 16, 1966, art. 2(1), G.A. Res. 2200A (XXI), U.N. GAOR, Supp. No. 16, U.N. Doc. A/6316 (1966) (*entered into force* Jan. 3, 1976) [hereinafter ICESCR]; Convention on the Rights of the Child, *adopted* Nov. 20, 1989, art. 4, G.A. Res. 44/25, U.N. GAOR, U.N. Doc. A/RES/44/25 (1989) (*entered into force* Sept. 2, 1990) [hereinafter CRC]; Convention on the Rights of Persons with Disabilities, *adopted* Dec. 13, 2006, art, 4(2), G.A. Res. A/RES/61/106, U.N. GAOR, 61st Sess., U.N. Doc. A/61/611 (1980) (*entered into force* May, 3 2008) [hereinafter CRPD]; *see also* CESCR, *General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)*, para. 9, U.N. Doc. E/1991/23 (1990) [hereinafter CESCR, *Gen. Comment No. 3*].

54 States cannot derogate from certain *jus cogens* norms, such as the prohibitions on torture, genocide, and slavery, even during situations of armed conflict. Human Rights Committee, *Gen. Comment No. 29*, *supra* note 53, para. 7. Minimum core obligations with respect to economic, social, and cultural rights are not subject to resource availability and are non-derogable. CESCR, *General Comment No. 14 (2000): The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, para. 47, U.N. Doc. E/C.12/2000/4 (2000) [hereinafter CESCR, *Gen. Comment No. 14*]; CESCR, *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)*, para. 40, U.N. Doc. E/C.12/2002/11 (2003); *see also* OHCHR, *Protection of Economic, Social and Cultural Rights in Conflict, Report of the High Commissioner for Human Rights*, 4-5 (2015), *available at* http://www.ohchr.org/Documents/Issues/ESCR/E-2015-59.pdf. At the regional level, the African Charter of Human and Peoples' Rights does not permit any grounds for derogation. African Charter for Human and Peoples' Rights, *adopted* June 27, 1981, art. 25, O.A.U. Doc. CAB/LEG/67/3, rev. 5, 21 I.L.M. 58 (1982) (*entered into force* Oct. 21, 1986) (Banjul Charter).

55 Human Rights Committee, *Gen. Comment No. 29*, *supra* note 53, para. 8.

56 Center for Reproductive Rights, Reproductive Rights are Human Rights, *supra* note 45, 5 (2009).

57 CESCR, *General Comment No. 22 (2016) on the Right to sexual and reproductive health*, para. 5, U.N. Doc. E/C.12/GC/22 (2016) [hereinafter CESCR, *Gen. Comment No. 22*]. Notably, IHL shares some of these goals, particularly as they relate to the non-discriminator provision of medical care in armed conflict. *See* Part III.b *infra*.

58 CESCR, *Gen. Comment No. 14*, *supra* note 54, paras. 40, 65 (affirming applicability of Covenant in conflict settings and state obligations to ensure minimum essential levels of Covenant rights); CESCR, *Gen. Comment No. 3*, *supra* note 53, para. 10; CESCR, *Concluding Observations: Israel*, *supra* note 50, paras. 19, 31; CESCR, *Concluding Observations: Nepal*, para. 45, U.N. Doc. E/C.12/NPL/CO/2 (2008) (regarding the right to health more generally).

59 CESCR, *Gen. Comment No. 14*, *supra* note 54, paras. 43-44; CESCR, *Gen. Comment No. 22*, *supra* note 57, para. 49(f).

60 CESCR, *Gen. Comment No. 14*, *supra* note 54, para. 43; CESCR, *Gen. Comment No. 3*, *supra* note 53, para. 10. *See also* SR Health Report (2013), *supra* note 16, para. 11.

61 CEDAW Committee, *General Recommendation No. 24: Article 12 of the Convention (Women and Health)*, paras. 17, 26, U.N. Doc. A/54/38/Rev. 1 (1999) [hereinafter CEDAW Committee, *Gen. Recommendation No. 24*]; Alyne da Silva Pimentel Teixeira v Brazil, CEDAW Committee, Commc'n No. 17/2008, paras. 7.6-7.7, U.N. Doc. CEDAW/C/49/D/17/2008 (2011).

62 CEDAW Committee, *Concluding Observations: Central African Republic*, para. 13, U.N. Doc. CEDAW/C/CAF/CO/1-5 (2014). *See also* CEDAW Committee, *Gen. Recommendation No. 28*, *supra* note 50, para. 11; CEDAW Committee, *Gen. Recommendation No. 30*, *supra* note 33, para. 4.

63 CEDAW Committee, *Gen. Recommendation No. 30*, *supra* note 33, para. 52(c). Notably, the CEDAW Committee's guidance does not condition the provision of safe abortion services to circumstances in which abortion services are legal.

64 S.C. Res. 2106, para. 19, U.N. Doc. S/RES/2106 (June 24, 2013).

65 S.C. Res. 2122, *supra* note 52, preamble.

66 CEDAW Committee, *Gen. Recommendation No. 24*, *supra* note 61, paras. 26-27; CESCR, *Gen. Comment No. 22*, *supra* note 57, para. 45; CESCR, *Gen. Comment No. 14*, *supra* note 54, para. 14. *See also* 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).

67 Convention on the Elimination of All Forms of Discrimination against Women, *adopted* Dec. 18, 1979, art. 12(2), G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46 (1980), U.N.T.S. 13 (*entered into force* Sept. 3, 1981) [hereinafter CEDAW]; CEDAW Committee, *Gen. Recommendation No. 24*, *supra* note 61, para. 26.

68 *See, e.g.*, CEDAW Committee & CRC Committee, *Joint Gen. 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*, para. 22, U.N. Doc. CEDAW/C/GC/31-CRC/C/GC/18 (2014) [hereinafter CEDAW & CRC Committees, *Joint Gen. Recommendations No. 31/18*].

69 Alyne da Silva Pimentel Teixeira v Brazil, CEDAW Committee, Commc'n No. 17/2008, paras. 7.6-7.7, U.N. Doc. CEDAW/C/49/D/17/2008 (2011); CEDAW Committee, *Gen. Recommendation No. 24*, *supra* note 61, paras. 17, 26.

70 *See* CEDAW Committee, *Concluding Observations: Malawi*, para. 31, U.N. Doc. CEDAW/C/MWI/CO (2006); CESCR, *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, *Concluding Observations: Yemen*, para. 31, U.N. Doc. CAT/C/YEM/ CO/2/ Rev. 1 (2010); CEDAW Committee, *Concluding Observations: Bangladesh*, para. 34, U.N. Doc. CEDAW/C/BGD/CO/8 (2016); CEDAW Committee, *Concluding Observations: Argentina*, para. 32, U.N. Doc. CEDAW/C/ARG/CO/7 (2016); Human Rights Committee, *Concluding Observations: Jamaica*, para. 25, U.N. Doc. CCPR/C/JAM/CO/4 (2016).

71 *See* CEDAW Committee, *Gen. Recommendation No. 30*, *supra* note 33, para. 52(c).

72 CEDAW Committee, *Gen. Recommendation No. 32*, *supra* note 50, paras. 33-34.

[73] CEDAW Committee, *Concluding Observations: Central African Republic*, para. 40(b), U.N. Doc. CEDAW/C/CAF/CO/1-5 (2014); *see also* CEDAW Committee, *Concluding Observations: Democratic Republic of the Congo*, paras. 35-36, U.N. Doc. CEDAW/C/COD/CO/5 (2006) (noting concern "about the highly negative impact on maternal and infant mortality and morbidity rates of the protracted armed conflict, which resulted in lack of access to obstetric care, dilapidated clinics and lack of utilization of existing services during pregnancy and childbirth" and recommending the state take steps to improve women's access to emergency obstetric care and health-related services, in particular).

[74] CEDAW Committee, *Concluding Observations: Syria*, para. 40, U.N. Doc. CEDAW/C/SYR/CO/2 (2014).

[75] CESCR, *Gen. Comment No. 14*, *supra* note 54, para. 43; CESCR, *Gen. Comment No. 3*, *supra* note 53, para. 10. *See also* SR Health Report (2013), *supra* note 16, para. 11.

[76] CESCR, *Concluding Observations: Israel*, para. 32, U.N. Doc. E/C.12/ISR/CO/3 (2011).

[77] *See, e.g.*, CESCR, *Gen. Comment No. 22*, *supra* note 57, para. 6; CEDAW Committee, *Gen. Recommendation No. 24*, *supra* note 61, para. 28; CRC Committee, *General Comment No. 20 (2016) on the implementation of the rights of the child during adolescence*, para. 59, U.N. Doc. CRC/C/GC/20 (2016) [hereinafter CRC Committee, *Gen. Comment No. 20*]; CRC Committee, *General Comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24)*, para. 69, U.N. Doc. CRC/C/GC/15 (2013); Human Rights Committee, *Concluding Observations: Paraguay*, para. 13, U.N. Doc CCPR/C/PRY/CO/3 (2013); *Peru*, para. 14, U.N. Doc CCPR/C/PER/CO/5 (2013); CESCR, *Concluding Observations: Armenia*, para. 22, U.N. Doc. E/C.12/ARM/CO/2-3 (2014).

[78] *ICPD Programme of Action*, *supra* note 49, principle 8; *see also* CEDAW Committee, *General Recommendation No. 21: Equality in Marriage and Family Relations*, para. 22, U.N. Doc. A/49/38 (1994).

[79] *See* CEDAW Committee, *Concluding Observations: Angola*, para. 32(e), U.N. Doc. CEDAW/C/AGO/CO/6 (2013); *India*, para. 30-31, U.N. Doc. CEDAW/C/IND/CO/4-5 (2014); *Hungary*, para. 31(b), U.N. Doc CEDAW/C/HUN/CO/7-8 (2013); *Poland*, paras. 36-37, U.N. Doc. CEDAW/C/POL/CO/7-8 (2014); *China*, para. 39(d), U.N. Doc. CEDAW/C/CHN/CO/7-8 (2014); CESCR, *Concluding Observations: Djibouti*, para. 5, U.N. Doc. E C.12/DJI/CO/1-2 (2014); *Poland*, para. 27, U.N. Doc. E/C.12/POL/CO/5 (2009); *Armenia*, para. 22(b), U.N. Doc. E/C.12/ARM/CO/2-3 (2014); CRC Committee, *Concluding Observations: Mozambique*, para. 47(b), U.N. Doc. CRC/C/15/Add.172 (2002); Human Rights Committee, *Concluding Observations; Madagascar*, para. 17(a), U.N. Doc. CCPR/C/MDA/CO/2 (2009); CEDAW Committee, *Concluding Observations: Honduras*, para 36(d), U.N. Doc. CEDAW/C/HND/CO/7-8 (2016); Human Rights Committee, *Concluding Observations: Moldova*, para. 18(a), U.N. Doc. CCPR/C/MDA/CO/3 (2016); CESCR, *Concluding Observations: Poland*, para. 49(a), U.N. Doc. E/C.12/POL/CO/6 (2016).

[80] CESCR, *Gen. Comment No. 14*, *supra* note 54, para. 12(a).

[81] CESCR, *Gen. Comment No. 22*, *supra* note 57, para. 41; CRC Committee, *Gen. Comment No. 20*, *supra* note 77, para. 60; CESCR, *Concluding Observations: Indonesia*, para. 33, U.N. Doc. ESCR/C.12/IDN/CO/1 (2014); CRC Committee, *Concluding Observations: Indonesia*, paras. 49-50, U.N. Doc. CRC/C/IND/CO/3-4 (2014).

[82] *See* CEDAW Committee, *Gen. Recommendation No. 24*, *supra* note 61, para. 17 ("Studies such as those that emphasize…the large numbers of couples who would like to limit their family size but lack access to or do not use any form of contraception provide an important indication for States parties of Possible breaches of their duties to ensure women's access to health care."); CEDAW Committee, *Concluding Observations: Angola*, para. 31(c), U.N. Doc CEDAW/C/AGO/CO/6 (2013); *Former Yugoslav Republic of Macedonia*, para. 33, U.N. Doc CEDAW/C/MKD/CO/4-5 (2013); *Cameroon*, para. 32, U.N. Doc. CEDAW/C/CMR/CO/4-5 (2014); CRC Committee, *Concluding Observations: Kyrgyzstan*, paras. 51-52, U.N. Doc. CRC/C/KGZ/CO/3-4 (2014); Human Rights Committee, *Concluding Observations: Malawi*, para. 9, U.N. Doc. CCPR/C/MWI/CO/1/Add.1 (2014); CESCR, *Concluding Observations: El Salvador*, para. 23, U.N. Doc. ESCR/C.12/SLV/CO/3-5 (2014).

[83] Human Rights Committee, *Concluding Observations: Peru*, para. 14, U.N. Doc CCPR/C/PER/CO/5 (2013); CAT Committee, *Concluding Observations: Sierra Leone*, para. 18, U.N. Doc. CAT/C/SLE/CO/1 (2014) (recommending that the state provide SRH services "in order to prevent unwanted pregnancies"); CAT Committee, *Concluding Observations: Peru*, para. 15, U.N. Doc. CAT/C/PER/CO/5-6 (2013).

[84] CEDAW Committee, *Concluding Observations: Peru*, paras. 35-36, U.N. Doc. CEDAW/C/PER/CO/7-8 (2014); CRC Committee, *Concluding Observations: Costa Rica*, para. 64(e), U.N. Doc. CRC/C/CRI/CO/4 (2011).

[85] CEDAW Committee, *General Recommendation No. 19: Violence against women*, para. 16, *in* U.N. Doc. A/47/38 (1992) [hereinafter CEDAW Committee, *Gen. Recommendation No. 19*].

[86] *See* CEDAW Committee, *Gen. Recommendation No. 30*, *supra* note 33, para. 52(c); CEDAW Committee, *Concluding Observations: Central African Republic*, paras. 39-40, U.N. Doc. CEDAW/C/CAF/CO/1-5 (2014); CEDAW Committee, *Concluding Observations: Democratic Republic of the Congo*, paras. 35-36, U.N. Doc. CEDAW/C/COD/CO/5 (2006) (calling on the state to "improve the availability of sexual and reproductive health services, including family planning, also with the aim of preventing early pregnancies and clandestine abortions").

[87] *ICPD Programme of Action*, *supra* note 49, para. 10.25.

[88] U.N. Secretary General, *Sexual Violence in Conflict: Rep. of the Secretary-General*, para. 12, U.N. Doc. A/67/792-S/2013/149 (Mar. 14, 2013) [hereinafter *Rep. of the Secretary General*, *Sexual Violence in Conflict*].

[89] *See, e.g.*, CEDAW Committee, *Gen. Recommendation No. 30*, *supra* note 33, para. 52(c); CEDAW Committee, Gen. Comment No. 28, *supra* note 50, para. 21; CESCR, Gen. Comment No. 22, *supra* note 57, para. 30; S.C. Res. 2122, *supra* note 52, preamble.

[90] *See, e.g.*, L.C. v. Peru, CEDAW Committee, Commc'n No. 22/2009, para. 12(b), U.N. Doc. CEDAW/C/50/D/22/2009 (2011); K.L. v. Peru, Human Rights Committee, Commc'n No. 1153/2003, U.N. Doc. CCPR/C/85/D/1153/2003 (2005). Human Rights Committee, *Concluding Observations: Ireland*, para. 9, U.N. Doc. CCPR/C/IRL/CO/4 (2014); CEDAW Committee, *Concluding Observations: Bahrain*, para. 42(b), U.N. Doc. CEDAW/C/BHR/CO/3 (2014); CAT Committee, *Concluding Observations: Paraguay*, para. 22, U.N. Doc. CAT/C/PRY/CO/4-6 (2011); Human Rights Committee, *Concluding Observations: Sierra Leone*, para. 14, U.N. Doc CCPR/C/SLE/CO/1 (2014); CRC Committee, *Concluding Observations: Chad*, para. 30, U.N. Doc. CRC/C/15/Add.107 (1999); *Chile*, para. 56, U.N. Doc. CRC/C/CHL/CO/3 (2007); *Costa Rica*, para. 64(c), U.N. Doc. CRC /C/CRI/CO/4 (2011); Human Rights Committee, *Concluding Observations: Guatemala*, para. 20, U.N. Doc. CCPR/C/GTM/CO/3 (2012); ESCR Committee, *Concluding Observations: Dominican Republic*, para. 29, U.N. Doc. E/C.12/DOM/CO/3 (2010); *Chile*, para. 53, U.N. Doc. E/C.12/1/Add.105 (2004).

[91] *See, e.g.*, CESCR, General Comment No. 22, *supra* note 57, para. 28; CAT Committee, *Concluding Observations: Paraguay*, para. 22, U.N. Doc. CAT/C/PRY/CO/4-6 (2011); U.N. Human Rights Council, *Report of the OHCHR: Practices in adopting a human-rights based approach to eliminate preventable maternal mortality and human rights*, para. 29, U.N. Doc. A/HRC/18/27 (Jul. 8, 2011).

[92] L.C. v. Peru, CEDAW Committee, Commc'n No. 22/2009, para. 9(b)(i), U.N. Doc. CEDAW/C/50/D/22/2009 (2011).

[93] *Frequently Asked Questions*, WHO, http://www.who.int/suggestions/faq/en/.

[94] CRC Committee, *Gen. Comment No. 20*, *supra* note 77, paras. 39, 60.

[95] *See, e.g.*, K.L. v. Peru, Human Rights Committee, Commc'n No. 1153/2003, U.N. Doc. CCPR/C/85/D/1153/2003 (2005); L.M.R. v. Argentina, Human Rights Committee, Commc'n No. 1608/2007, U.N. Doc. CCPR/C/101/D/1608/2007 (2011); CAT Committee, *Concluding Observations: Poland*, para. 23, U.N. Doc. CAT/C/POL/CO/5-6 (2013); *Sierra Leone*, para. 17, U.N. Doc. CAT/C/SLE/CO/1 (2014).

[96] *See, e.g.*, CAT Committee, *Concluding Observations: Paraguay*, para. 22, U.N. Doc. CAT/C/PRY/CO/4-6 (2011); *El Salvador*, para. 23, U.N. Doc. CAT/C/SLV/CO/2 (2009); *Nicaragua*, para. 16, U.N. Doc. CAT/C/NIC/CO/1 (2009); Center for Reproductive Rights, Reproductive Rights Violations as Torture or Ill-Treatment 22 (2010), *available at* http://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/Reproductive_Rights_Violations_As_Torture.pdf [hereinafter CRR, RR Violations as Torture].

[97] *See, e.g.*, CAT Committee, *Concluding Observations: Peru*, para. 15(a), U.N. Doc. CAT/C/PER/CO/5-6 (2013); *Poland*, para. 23, U.N. Doc. CAT/C/POL/CO/5-6 (2013); *Paraguay*, para. 22, U.N. Doc. CAT/C/PRY/CO/4-6 (2011); *El Salvador*, para. 23, U.N. Doc. CAT/C/SLV/CO/2 (2009); *Nicaragua*, para. 16, U.N. Doc. CAT/C/NIC/CO/1 (2009); CRR, RR Violations as Torture, *supra* note 96, at 22.

[98] *See, e.g.*, LMR v. Argentina, Commc'n No. 1608/2007, para. 9.2; K.L. v. Peru, Commc'n No. 1153/2003, para. 6.3. *See also* Human Rights Committee, *Concluding Observations: Ireland*, para. 9, U.N. Doc. CCPR/C/IRL/CO/4 (2014).

[99] Mellet v. Ireland, Human Rights Committee, Commc'n No. 2324/2013, para. 3.20, U.N. Doc. CCPR/C/116/D/2324/2013 (2016).

[100] *See, e.g.*, P. and S. v. Poland, No. 57375/08 Eur. Ct. H.R., paras. 167-69 (2012); R.R. v. Poland, No. 27617/04 Eur. Ct. H.R. (2011) (finding Poland's failure to ensure practical access to legal abortion services amounted to a violation of the state's positive obligations under Article 3 (right to be free from inhuman and degrading treatment), Article 5 (right to liberty), and Article 8 (right to respect for private and family life) of the European Convention on Human Rights).

[101] Protocol to the African Charter on Human and Peoples' Rights on the Rights

of Women in Africa, 2nd Ordinary Sess., Assembly of the Union, adopted July 11, 2003, art. 14, para. XX, CAB/LEG/66.6 (2000) (*entered into force* Nov. 25, 2005) (hereinafter Maputo Protocol).

102 CEDAW Committee, *Gen. Recommendation No. 30*, *supra* note 33, para. 52(c).

103 *Id.*, para. 52(c); CEDAW Committee, *Concluding Observations: Syria*, para. 40, U.N. Doc. CEDAW/C/SYR/CO/2 (2014); CEDAW Committee, *Concluding Observations: Democratic Republic of the Congo*, para. 32(e), U.N. Doc. CEDAW/C/COD/CO/6-7 (2013); Human Rights Committee, *Concluding Observations: Democratic Republic of the Congo*, paras. 13-14, U.N. Doc. CCPR/C/COD/CO/3 (2006).

104 CEDAW Committee, *Concluding Observations: Syria*, para. 40, U.N. Doc. CEDAW/C/SYR/CO/2 (2014).

105 CESCR, *Gen. Comment No. 22*, *supra* note 57, para. 49.

106 *Report of the Secretary-General*, *Sexual Violence in Conflict*, *supra* note 88, para. 12.

107 S.C. Res. 2122, *supra* note 52, preamble.

108 CEDAW Committee, *Gen. Recommendation No. 19*, *supra* note 85, para. 7; CEDAW Committee, *Gen. Recommendation No. 24*, *supra* note 61, paras. 15, 29; M.E.N. v. Denmark, CEDAW Committee, Commc'n No. 35/2011, para. 8.8, U.N. Doc. CEDAW/C/55/D/35/2011 (2013).

109 *See, e.g.*, Angela Gonzalez Carreno v. Spain, CEDAW Committee, Commc'n No. 47/2012, para. 9.9, U.N. Doc. CEDAW/C/58/D/47/2012 (2014) (finding that, despite "legislation, awareness-raising, education and capacity-building" around domestic violence, the state had violated its due diligence obligation "to investigate the existence of failures, negligence or omissions on the part of public authorities which may have caused victims to be deprived of protection").

110 *See* Vertido v. The Philippines, CEDAW Committee Commc'n No. 18/2008, para. 8.5, U.N. Doc. CEDAW/C/46/D/18/2008 (2010).

111 CEDAW Comm., *Gen. Recommendation No. 24*, *supra* note 61, paras. 15, 29.

112 *See, e.g.*, Mellet v. Ireland, Human Rights Comm., Communication No. 2324/2013, U.N. Doc. CCPR/C/116/D/2324/2013 (2016); CAT Committee, *Concluding Observations: Sierra Leone*, para. 17, U.N. Doc. CAT/C/SLE/CO/1 (2014); *Poland*, para. 23, U.N. Doc. CAT/C/POL/CO/5-6 (2013).

113 Human Rights Committee, *General Comment No. 28: Article 3 (The Equality of Rights Between Men and Women)*, (68th Sess., 2000), para. 11, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000) [hereinafter Human Rights Committee, *Gen. Comment 28*]; CAT Committee, *Concluding Observations: Ghana*, para. 23, U.N. Doc. CAT/C/GHA/CO/1 (2011); *Indonesia*, para. 16, CAT/C/IDN/CO/2 (2008).

114 CAT Committee, *Concluding Observations: Austria*, para. 22, U.N. Doc. CAT/C/AUT/CO/4-5 (2010).

115 CESCR, *Gen. Comment No. 22*, *supra* note 57, para. 29 (calling on states to prevent and remedy gender-based violence that results in the denial of sexual and reproductive health); CESCR, *Gen. Comment No. 14*, *supra* note 54, paras. 21, 35 (linking the article 12 right to health with state obligations to protect women from domestic violence and from harmful practices).

116 CRC Committee, *General Comment No. 13 (2011): The right of the child to freedom from all forms of violence*, para. 72(b), U.N. Doc. CRC/C/GC/13 (2011).

117 CRPD, *supra* note 53, art. 16.

118 *See* CEDAW & CRC Committees, *Joint Gen. Recommendations No. 31/18*, *supra* note 68, para. 14.

119 Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Rep. of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, paras. 58, 63, U.N. Doc. A/HRC/31/57 (Jan. 5, 2016) (by Juan E. Méndez) (finding that child, early, and forced marriage is motivated in part by sex and gender-based norms and inflicts long-term physical and psychological harm on victims through sexual abuse, marital rape, and life-threatening pregnancies).

120 CEDAW & CRC Committees, *Joint Gen. Recommendations No. 31/18*, *supra* note 68, paras. 22-23; *see also* CEDAW Committee, *Concluding Observations: Guinea*, para. 102, U.N. Doc. A/56/38 (2001).

121 CEDAW Committee, *Gen. Recommendation No. 30*, *supra* note 33, para. 38(e); *see also* CAT Committee, *Concluding Observations: Iraq*, para. 13, U.N. Doc. CAT/C/IRQ/CO/1 (2015).

122 CEDAW Committee, *Concluding Observations: Democratic Republic of the Congo*, paras. 10, 32, U.N. Doc. CEDAW/C/COD/CO/6-7 (2013); *see also* CEDAW Committee, *Concluding Observations: Central African Republic*, para 40, U.N. Doc. CEDAW/C/CAF/CO/1-5 (2014) (recommending that the state "[e]nsure that women who are victims of rape, including rapes perpetrated during the conflict, have access to health-care and psychosocial services, including emergency contraception and safe abortion services").

123 CEDAW Committee, *Gen. Recommendation No. 30*, *supra* note 33, para. 57.

124 ICRC, 2016 Commentary on the First Geneva Convention, *supra* note 42, art. 12, para. 1392; *Id.* art. 3, para. 578; Jean S. Pictet et al., Commenatary: I Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, art. 12 (1952) [hereinafter Pictet Commentary, Vol. I]. *See also* ICRC, Customary IHL Database, *Rule 88*, https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule88 (last visited May 31, 2017); Jelena Pejic, *Non-discrimination and armed conflict*, 841 International Review of the Red Cross (2001), https://www.icrc.org/eng/resources/documents/article/other/57jqzq.htm.

125 Charlotte Lindsey, *Women Facing War*, *supra* note 10, at 20.

126 Geneva Convention I, art. 12; Geneva Convention II, art. 12; Geneva Convention III, art. 14; Geneva Convention IV, art. 27 (discussing protection of women "against any attack on their honor," women as the "object of special respect," and the obligation to protect women "in particular against rape, forced prostitution and any other form of indecent assault"); Additional Protocol I, art. 76(1). ICRC, 2016 Commentary on the First Geneva Convention, *supra* note 42, art. 12, paras. 1426-37; *Id.*, art. 3, para. 578; Pictet Commentary, Vol. I, *supra* note 124, art. 12. See also ICRC, Customary IHL Database, *Rule 134*, https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule134 (last visited May 31, 2017) (collecting evidence of this rule from both IAC and NIAC).

127 ICRC, 2016 Commentary on the First Geneva Convention, *supra* note 42, art. 3, paras. 696-707; ICRC, Customary IHL Database, *Rule 134*, https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule134 (last visited May 31, 2017).

128 ICRC, 2016 Commentary on the First Geneva Convention, *supra* note 42, art. 12, paras. 1429-30 (emphasis added).

129 Geneva Convention I, art. 12; Additional Protocol I, art. 8(a); ICRC, 2016 Commentary on the First Geneva Convention, *supra* note 42, art. 12, paras. 1432 (2016); ICRC, Customary IHL Database, *Rule 134*, https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule134 (last visited May 31, 2017) (citing to CEDAW report).

130 ICRC, 2016 Commentary on the First Geneva Convention, *supra* note 42, art. 12, para. 1365; Pictet Commentary, Vol. I, *supra* note 124, art. 12; ICRC, Customary IHL Database, *Rule 110*, https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule110 (last visited May 31, 2017).

131 Additional Protocol I, art. 8(a).

132 *See, e.g.*, Bellal, *Who is Wounded and Sick?*, *in* The 1949 Geneva Conventions: A Commentary 762-64 (Clapham, Gaeta, Sassòli, eds.) (2015) (noting that "rape victims can be qualified as 'wounded and sick' within the meaning of the Geneva Conventions"); Stéphane Kolanowski, *Protection of Women under International Humanitarian Law*, Report of ICRC-EUISS Colloquium on Women and War 21 (Sept. 30, 2014), *available at* https://www.icrc.org/en/download/file/8598/icrc_report_women_and_war.pdf.

133 ICRC, 2016 Commentary on the First Geneva Convention, *supra* note 42, art. 12, para. 1379; ICRC, Customary IHL Database, *Rule 110*, https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule110 (last visited May 31, 2017).

134 ICRC, 2016 Commentary on the First Geneva Convention, *supra* note 42, art. 12, paras. 1392-96 (2016); ICRC, Customary IHL Database, *Rule 88*, https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule88 (last visited May 31, 2017); *Rule 110*, https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule110 (last visited May 31, 2017).

135 ICRC, 2016 Commentary on the First Geneva Convention, *supra* note 42, art. 3, para. 578, n. 339 ("In permitting and in fact requiring distinction that is not adverse but favourable to the persons concerned, so that they fully benefit from humane treatment, humanitarian law is not dissimilar to human rights law in its approach to non-discrimination."); *see also* Gabor Rona and Robert McGuire, *The Principle of Non-Discrimination*, para. 7, *in* The 1949 Geneva Conventions: A Commentary (Clapham, Gaeta, Sassòli, eds.) (2015).

136 Common Article 3. *See also* Geneva Convention I, art. 12; Geneva Convention II, art. 12; Geneva Convention III, art. 13; Geneva Convention IV, arts. 5 and 27; Additional Protocol I, art. 75(1); Additional Protocol II, art. 4(1). Persons *hors de combat* include "(a) anyone who is in the power of an adverse party; (b) anyone who is defenceless because of unconsciousness, shipwreck, wounds or sickness; or (c) anyone who clearly expresses an intention to surrender; provided he or she abstains from any hostile act and does not attempt to escape." ICRC, Customary IHL Database, *Rule 47*, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule47 (last visited May 31, 2017). IHL also includes explicit obligations to treat prisoners of war humanely. ICRC, Customary IHL Database, *Rule 87*, https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule87 (last visited May 31, 2017). In general, IHL guarantees women the same protection as men regardless of status, but provides women with some specific protections in recognition of their specific needs, as described *supra*. ICRC, Customary IHL Database, *Rule 134*, https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule134 (last visited May 31, 2017).

137 Common Article 3. *See also* ICRC, 2016 Commentary on the First Geneva Convention, *supra* note 42, art. 3, paras. 202-08; Pictet Commentary, Vol. I, *supra* note 124, art. 3 (noting that the listing in Common Article 3 was intended to be flexible and not restrictive); Jean S. Pictet et al., Commenatary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War, art. 3 (1958); ICRC, Customary IHL Database, *Rule 87*, https://www.

icrc.org/customary-ihl/eng/docs/v1_rul_rule87 (last visited May 31, 2017).

138 Additional Protocol I, art. 75 (prohibiting "humiliating and degrading treatment, enforced prostitution and any form of indecent assault"); Additional Protocol II, art. 4 (including rape as an outrage upon personal dignity); ICRC, Customary IHL Database, *Rule 93*, https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule93 (last visited May 31, 2017).

139 ICRC, Customary IHL Database, *Rule 87*, https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule87 (last visited May 31, 2017).

140 ICRC, 2016 Commentary on the First Geneva Convention, *supra* note 42, art. 3, para. 203.

141 ICRC, Customary IHL Database, *Introduction to Fundamental Guarantees*, https://www.icrc.org/customary-ihl/eng/docs/v1_rul_intofugu (last visited May 31, 2017); ICRC, Customary IHL Database, *Rule 87*, https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule87 (last visited May 31, 2017).

142 *See* ICRC, 2016 Commentary on the First Geneva Convention, *supra* note 42, art. 3 (citing to human rights bodies and standards to interpret the scope of humane treatment); International Criminal Tribunal for the Former Yugoslavia (ICTY), Prosecutor v. Furundzija, Case No. IT-95-17/1 (Trial Chamber), 10 December 1998, para. 159 (citing to the Convention Against Torture to interpret the definition of torture under IHL); *see also* Cordula Droege, *'In truth the leitmotiv': the prohibition of torture and other forms of ill-treatment in international humanitarian law*, 89 Int'l Rev. of the Red Cross 515, 517 (2007), https://www.icrc.org/eng/assets/files/other/irrc-867-droege.pdf (noting that "the notions of ill-treatment are so similar" in IHL and IHRL "that the interpretation of one body of law influences the other and *vice versa*"). *Cf.* Manfred Nowak and Ralph Janik, *Torture, Cruel, Inhuman, or Degrading Treatment or Punishment, in* The 1949 Geneva Conventions: A Commentary 320 (Clapham, Gaeta, Sassòli, eds.) (2015) (describing the different types of ill-treatment under IHRL, IHL, and ICL and noting that there are some differences in the definition and interpretation of these terms among different bodies and courts).

143 *See, e.g.*, Mellet v. Ireland, Human Rights Committee, Commc'n No. 2324/2013, U.N. Doc. CCPR/C/116/D/2324/2013 (2016); L.M.R. v. Argentina, Human Rights Committee, Commc'n No. 1608/2007, U.N. Doc. CCPR/C/101/D/1608/2007 (2011); K.L. v. Peru, Human Rights Committee, Commc'n No. 1153/2003, U.N. Doc. CCPR/C/85/D/1153/2003 (2005); CAT Committee, *Concluding Observations: Sierra Leone*, para. 17, U.N. Doc. CAT/C/SLE/CO/1 (2014); *Poland*, para. 23, U.N. Doc. CAT/C/POL/CO/5-6 (2013). *See also* Part III(a) *infra*. *See* Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Rep. of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, U.N. Doc. A/HRC/22/53 (Feb. 1, 2013) (by Juan E. Méndez) (on the denial of other forms of medical treatment as ill-treatment).

144 For example, the Norwegian Agency for Development Cooperation, the UK Department for International Development, and the Netherlands have issued policies and statements to this effect. *See, e.g.*, Norad, *Sexual Violence in Conflict and the Role of the Health Sector: Scoping Paper*, Norad Report 21/2011 12 (2011), *available at* https://www.norad.no/globalassets/import-2162015-80434-am/www.norad.no-ny/filarkiv/vedlegg-til-publikasjoner/sexual-violence-in-conflict-and-the-role-of-the-health-sector.pdf; United Kingdom Department for International Development, *Government Response: Abortion Services in Conflict Situations* (Feb. 11, 2013), https://www.gov.uk/government/news/abortion-services-in-conflict-situations; Press release, Global Justice Center, Netherlands Affirms Right of Women Raped in Armed Conflict to Abortions as Part of Necessary Medical Care Under International Law (Apr. 9, 2013), http://globaljusticecenter.net/index.php/news-andevents/news1/press-releases/319-netherlands-affirms-right-of-women-raped-in-armed-conflict-to-abortions-aspart-of-necessary-medical-care-under-international-law. The European Parliament also has urged that EU aid "not be subject to restrictions imposed by other partner donors" and called for a global commitment to ensure that "women and girls have access to the full range of sexual and reproductive health services, including safe abortions, in humanitarian cases, rather than perpetuating what amounts to inhumane treatment, as required by international humanitarian law and as foreseen in the Geneva Conventions and their Additional Protocols." Resolution on Preparing for the World Humanitarian Summit: Challenges and opportunities for humanitarian assistance, Eur. Parl. Doc. 2015/2051 (INI) (Dec. 16, 2015).

145 Geneva Convention I, arts. 49-50; ICRC, 2016 Commentary on the First Geneva Convention, *supra* note 42, arts. 49-50.

146 Geneva Conventions I-IV, art. 1. *See also Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, I.C.J. Rep. 1986 (June 27), paras. 215-220 (holding that the United States was "under an obligation […] not to encourage persons or groups engaged in the conflict in Nicaragua" to violate common article 3).

147 ICRC, 2016 Commentary on the First Geneva Convention, *supra* note 42, art. 1, paras. 164-173; *see also* ICRC, Customary IHL Database, *Rule 144*, https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule144 (last visited May 31, 2017) (reading the obligation as requiring states to "exert their influence, to the degree possible, to stop violations of international humanitarian law"); U.N. Security Council, *Rep. of the Secretary-General on the protection of civilians in armed conflict*, para. 22, U.N. Doc. S/2017/414 (May 10, 2017) (noting that states "must not facilitate violations by financing, arming or training parties who are at risk of flouting the law").

148 ICRC, 2016 Commentary on the First Geneva Convention, *supra* note 42, art. 1, para. 172.

149 *See* International Criminal Court (ICC), Office of the Prosecutor, Policy Paper on Sexual and Gender-Based Crimes, at 25 (June 2014), *available at* https://www.icc-cpi.int/iccdocs/otp/otp-Policy-Paper-on-Sexual-and-Gender-Based-Crimes--June-2014.pdf [hereinafter ICC Office of the Prosecutor, Policy Paper 2014]. *See also* Prosecutor v. Jean-Paul Akayesu, para. 11, Case No. ICTR-96-4-T (2 Sept. 1998); Prosecutor v. Furundžija, para. 42, Case No. IT-95-17/1-T ICTY (10 Dec. 1998).

150 Office of the Prosecutor, Policy Paper 2014, *supra* note 149, at 5.

151 *See* ICC, Understanding the International Criminal Court, at 5, https://www.icc-cpi.int/iccdocs/PIDS/publications/UICCEng.pdf; Clare Frances Moran, *Beyond the State: the Future of International Criminal Law*, 7 International Crimes Database (ICD) Brief 4 (Sept. 2014), *available at* http://www.internationalcrimesdatabase.org/upload/documents/20141002T145950-ICD%20Brief%20-%20Moran.pdf.

152 The definition of crimes against humanity includes "rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity." Rome Statute of the International Criminal Court (Rome, 17 July 1998), art. 7(2)(f), U.N. Doc. A/CONF.183/9 of 17 July 1998, *entered into force* 1 July 2002. War crimes include committing "rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in Article 7(2)(f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva conventions." *Id.*, art. 8(2).

153 Prosecutor v. Jean-Paul Akayesu, Trial Chamber I Judgement, ICTR 96-4-T, 2 September 1998, para. 731; *see also* ICC Office of the Prosecutor, Policy Paper 2014, *supra* note 149, at 6.

154 Statute of the International Criminal Tribunal for Rwanda arts. 1-3, Nov. 8, 1994.

155 Prosecutor v. Sesay, Kallon & Gbao (Judgement, Trial Chamber) Special Court for Sierra Leone, Case No. SCSL-04-15-T (2 March 2009).

156 Prosecutor v. Bemba, Case No. ICC-01/05-01/08 ICC (21 Mar. 2016).

157 International legal obligations and standards for the protection of refugees, internally displaced persons (IDPs), and asylum seekers are found in treaties and the policies and guidelines of UNHCR, the UN Refugee Agency. *See* Convention relating to the Status of Refugees (Geneva, 28 July 1951) 189 U.N.T.S. 137, *entered into force* 22 April 1954 [hereinafter 1951 Refugee Convention]; Protocol relating to the Status of Refugees (New York, 31 Jan. 1967) 606 U.N.T.S. 267, *entered into force* 4 Oct. 1967. The 1951 Refugee Convention defines refugee status and state obligations with regard to basic standards of treatment.

158 *See generally* United Nations High Commissioner for Refugees (UNHCR), Handbook for Protection of Women and Girls (2008), http://www.unhcr.org/en-us/protection/women/47cfa9fe2/unhcr-handbook-protection-women-girls-first-edition-complete-publication.html.

159 1951 Refugee Convention, *supra* note 157, arts. 13, 16, 22 (noting that with respect to education, refugees shall be treated the same as nationals). It is important to note that obligations under refugee law extend to all refugees, and not only to those affected by conflict. *See* UNHCR, Refugee Protection: A Guide to International Refugee Law 8-11 (Dec. 1, 2001), *available at* http://www.unhcr.org/publications/legal/3d4aba564/refugee-protection-guide-international-refugee-law-handbook-parliamentarians.html [hereinafter UNHCR, Refugee Protection].

160 *ICPD Programme of* Action, *supra* note 49, para. 10.25.

161 CEDAW Committee, *Gen. Recommendation No. 28*, *supra* note 50, para. 12; CEDAW Committee, *Gen. Recommendation No. 32*, *supra* note 50, para. 4; CESCR, *Gen. Comment No.* 20, *supra* note 49, para. 30; CRC, *General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, para. 12, U.N. Doc. CRC/GC/2005/6 (2005). *See also* UNHCR, Refugee Protection, *supra* note 159, at 46.

162 UNHCR, Refugee Protection, at 46.

163 CEDAW, *supra* note 67, arts. 9, 15; CEDAW Committee, *Gen. Recommendation No. 28*, *supra* note 50, para. 31; CEDAW Committee, *Gen. Recommendation No.* 32, *supra* note 50, para. 8. International refugee and human rights law have recognized the rights of asylum seekers (those whose requests for asylum or sanctuary have yet to be processed), which include the fundamental guarantee of non-refoulement (protection against return to a country where an individual has reason to fear persecution). The International Law Commission recognizes that pressure on an individual to return can be direct or indirect. Rep. of the Int'l Law Comm'n: Draft articles on the expulsion of aliens with commentaries, 66th Sess., U.N. Doc.

A/69/10 (2014), *available at* http://legal.un.org/ilc/texts/instruments/english/commentaries/9_12_2014.pdf; *see also* UNHCR, Asylum-Seekers, http://www.unhcr.org/en-us/asylum-seekers.html (last visited June 12, 2017) (noting that asylum seekers can be categorized as "prima facie" refugees in situations of mass displacement).

164 CESCR, *Gen. Comment No. 14*, *supra* note 54, para. 65; CRC, *supra* note 54, art. 24.

165 Special Rapporteur on the human rights of internally displaced persons, *Rep. of the Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani – Mission to the Syrian Arab Republic*, para. 48, U.N. Doc. A/HRC/32/35/Add.2.

166 U.N. Economic and Social Council, *Guiding Principles on Internal Displacement: Rep. of the Representative of the Secretary-General, Mr. Francis M. Deng*, para. 19.2, U.N. Doc. E/CN.4/1998/53/Add.2 (Feb 11, 1998).

167 In fact, both IHL and IHRL envision a key role for aid organizations. IHL obligates parties to a conflict and third states to facilitate the passage of humanitarian relief to civilians in need. *See* ICRC, Customary IHL Database, *Rule 55*, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule55 (last visited May 31, 2017). *See also* CESCR, *Gen. Comment No. 14*, *supra* note 54, para. 65 (recognizing the important role of UN agencies in providing access to basic goods and services in humanitarian settings); SR Health Report (2013), *supra* note 16, para. 60.

168 *See* The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies, HRBA Portal (March 2005), http://hrbaportal.org/the-human-rights-based-approach-to-development-cooperation-towards-a-common-understanding-among-un-agencies [hereinafter Human Rights Based Approach to Development].

169 *Cf.* OHCHR, Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies, para. 21, U.N. Doc. HR/PUB/06/12 (2006) (noting, in the poverty reduction context, that an approach based on these principles shifts focus from "narrow economic issues towards a broader strategy that also addresses the socio-cultural and political-legal institutions which sustain the structures of discrimination"); *see also* UNFPA, The Human Rights-Based Approach, http://www.unfpa.org/human-rights-based-approach (last visited June 9, 2017) [hereinafter UNFPA, The Human Rights-Based Approach].

170 *See* Human Rights Based Approach to Development, *supra* note 168; Lena Kähler, Marie Villumsen, Mads Holst Jensen, and Pia Falk Paarup, *AAAQ & Sexual and Reproductive Health and Rights: International Indicators for Availability, Accessibility, Acceptability, and Quality*, The Danish Institute for Human Rights 24-25 (2017), *available at* https://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/nyheder/aaaq-srhr_issue_paper_dihr_2017_standard.pdf.

171 *See, e.g.*, OHCHR, A Human Rights-Based Approach to Data: Leaving No One Behind in the 2030 Development Agenda 6-7 (Feb. 19, 2016), http://www.ohchr.org/Documents/Issues/HRIndicators/GuidanceNoteonApproachtoData.pdf; University of Essex Human Rights Centre Clinic and the European Roma Rights Centre, Disaggregated Data and Human Rights: Law, Policy and Practice 7 (Oct. 2013), *available at* https://www.essex.ac.uk/hrc/careers/clinic/documents/disaggregated-data-and-human-rights-law-policy-and-practice.pdf; *see also* CESCR, *Gen. Comment No. 22*, *supra* note 57, para. 15 (noting that "health facilities, goods, information and services related to sexual and reproductive health care should be accessible to all individuals and groups without discrimination and free from barriers").

172 *See* Human Rights Based Approach to Development, *supra* note 168; UNFPA, The Human Rights-Based Approach, *supra* note 169.

173 *ICPD Programme of Action*, *supra* note 49, para. 7.7.

174 S.C. Res. 1889 [on women and peace and security], para. 1, U.N. Doc. S/RES/1889 (Oct. 5, 2009).

175 SR Health Report (2013), *supra* note 16, para. 12.

176 *Id.*, para. 12.

177 *See generally* United Nations 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*, A/RES/60/147 (21 March 2006) [hereinafter UNGA Res. 60/147]; *see also* SR Health Report (2013), *supra* note 16, paras. 61-67.

178 UNGA Res. 60/147, *supra* note 177, para. 3(b).

179 Restitution aims to restore the victim to her original situation before the violation and includes restoration of enjoyment of human rights, return to one's place of residence, or return of property. Compensation is required as appropriate and proportional to the gravity of the violation and the circumstances of each case. Rehabilitation includes medical and psychological care as well as legal and social services. Satisfaction aims to ensure the cessation of continuing violations and includes verification and public disclosure of facts. Guarantees of non-repetition aim to prevent future violations and include structural and systemic changes, such as legal reform and education. *Id.* paras. 19-23. *See also* Human Rights Committee, *Gen. Comment No. 31*, *supra* note 46, para. 16; CAT Committee, *General Comment No. 3: Implementation of article 14 by States parties*, para. 2, U.N. Doc. CAT/C/GC/3 (2012); CEDAW Committee, *General Recommendation No. 33 on women's access to justice*, para. 19(f), U.N. Doc. CEDAW/C/GC/33 (2015).

180 OHCHR, *Technical guidance on the application of a human-rights based approach to the implementation of policies and programmes to reduce preventable maternal morbidity and mortality*, paras. 74-75, U.N. Doc. A/HRC/21/22 (July 2, 2012).

181 *Id.*, para. 74; *see also Social Accountability*, CARE International, http://governance.care2share.wikispaces.net/Social+Accountability (last visited June 12, 2017).

Endnotes for Pull Outs and Text Box

i United Nations Population Fund (UNFPA), State of World Population 2015: Shelter from the Storm 63 (2015), *available at* https://www.unfpa.org/sites/default/files/sowp/downloads/State_of_World_Population_2015_EN.pdf.

ii. WHO, UNICEF, UNFPA, World Bank Group, and the United Nations Population Division, Trends in Maternal Mortality: 1990 to 2015, *Maternal Mortality Ratio (model estimate, per 100,000 live births): Syrian Arab Republic*, *available at* http://data.worldbank.org/indicator/SH.STA.MMRT?locations=SY (last visited May 31, 2017).

iii. *See, e.g.*, Laura Bassett, *Instruments of Oppression*, Huffington Post (2015), *available at* http://highline.huffingtonpost.com/articles/en/kenya-abortion/.

iv. *See* Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J., para. 136 (July 9); Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J., para. 25 (July 8); S.C. Res. 2122, preamble, U.N. Doc. S/RES/2122 (Oct. 18, 2013); S.C. Res. 1325, para. 9, U.N. Doc. S/RES/1325 (Oct. 31, 2000).

v. CEDAW Committee, *Gen. Recommendation No. 30*, *supra* note 33, para. 15; *see also* CEDAW Committee, *Gen. Recommendation No. 19*, *supra* note 85, para. 9 ("Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation."); A.T. v. Hungary, CEDAW Committee, Commc'n No. 2/2003, paras. 9.2-9.3, U.N. Doc. CEDAW/C/32/D/2/2003 Annex III (2005).

vi. CEDAW Committee, *Gen. Recommendation No. 30*, *supra* note 33, para. 16 (particularly "where an armed group with an identifiable political structure exercise significant control over territory and population").

vii. *See, e.g.*, S. C. Res. 2286, U.N. Doc. S/RES/2286 (2017) (on attacks on medical facilities and personnel); S.C. Res. 2249, U.N. Doc. S/RES/2249 (2015) (ISIS and Al Qaida affiliates); S.C. Res. 2071, para. 14, UN Doc. S/Res/2071 (2012) (Mali); S.C. Res.1894 (2009) (on the protection of civilians in armed conflict).

viii. *See, e.g.*, U.N. Human Rights Council, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, paras. 106-107, U.N. Doc. A/HRC/19/69 (Feb. 22, 2012); U.N. Human Rights Council, *Report of the Independent International Commission of Inquiry to investigate all alleged violations of international human rights law in the Libyan Arab Jamahiriya*, para. 62, U.N. Doc. A/HRC/17/44 (Jun. 1, 2011).

ix. *See, e.g.*, Remarks of Zainab Bangura, Special Representative of the Secretary General on Sexual Violence in Conflict to the U.N. Security Council, U.N. Doc. S.PV.7560 (Nov. 16, 2015), http://www.un.org/ga/search/view_doc.asp?symbol=S/PV.7560&referer=/english/&Lang=E. *See also* U.N. Security Council, *Conflict-related sexual violence: Rep. of the Secretary-General*, para. 100(b), U.N. Doc. S/2015/203 (Mar. 23, 2015); U.N. Human Rights Council, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, para. 106, U.N. Doc. A/HRC/19/69 (Feb. 22, 2012). *See generally* U.N. Office of the High Commissioner for Human Rights (OHCHR), International Legal Protection of Human Rights in Armed Conflict 23-27 (2011), *available at* http://www.ohchr.org/Documents/Publications/HR_in_armed_conflict.pdf (collecting evidence of U.N. practice with regard to human rights obligations of non-state actors).

Image Credits

Cover photo: Kenya / Somali Refugees / Dadaab / Alima Abdi Abdullahi, 20, carrying her newborn baby Omar and a jerrycan of 5 litres water, comes back from the bush with some firewood she collected. Sometimes she has to stay away all day from her house to collect it. She arrived in the camp in 2008 from Kapsum, near Kisimayo, Somalia. May 28, 2010. ***© UNHCR/ Riccardo Gangale***

Page 5: Kenya / Ifo 3, an extension to the world's largest refugee camp complex in Dadaab, Kenya. The camp was created to give shelter and services to the huge influx of refugees to Dadaab refugee camps from Somalia in 2011. October 04, 2011. ***© Brendan Bannon/IOM/UNHCR***

Page 10: Lebanon / Iman is 16 years old and 9 months pregnant. She recently arrived from Syria. March 01, 2013. ***© UNHCR/Gregory Beals***

Page 14: Ukraine / Kristina is a young 20-year-old mother holding her 3-year-old daughter Evelina on her knees. In July 2014, they found temporary shelter in the cellar of the House of Culture in Petrivskiy district of Donetsk when their own house had been completely destroyed by artillery fire. Their previous house is only 1 kilometer away from the bomb shelter. "There is nothing left either inside or outside our previous home", states Kristina. As a young mother she relies on state child and maternity payments to maintain her and her daughter's lives. The suspension of social payments is one of the major protection concerns for the population. June 16, 2015. ***© UNHCR/Alexander Khudotepliy***

Page 18: Nigeria / Malkoli Camp / Women and children form the great majority of Nigerians internally displaced since 2009 by a brutal campaign waged by the Boko Haram organization to form an Islamic government in the west African state. February 20, 2016. ***© UNHCR/George Osodi***

Page 22-23: Jordan / Za'atari Camp / A general view of Jordan's Za'atari refugee camp, the largest in the country housing 85,000 Syrians in 2015. March 11, 2015. ***© UNHCR/Dominic Nahr***

Page 30: Democratic Republic of the Congo / A Burundian mother and child sit outside a shelter in the Kamvivira transit centre, October 12, 2016. ***© UNHCR/ Eduardo Soteras Jalil***

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