
35 million women and girls of reproductive age require humanitarian assistance due to conflict and natural disasters.

Summary of Technical Paper

Accountability for Sexual and Reproductive Health and Rights in Humanitarian Settings:

Examining the Role and Relationship of Diverse Branches of International Law

I. Introduction

The breakdown of health systems and disruption of access to health care often hinders access to sexual and reproductive health (SRH) services in humanitarian settings, particularly in armed conflict.¹ Yet, SRH needs persist and often grow more acute in these contexts, including the need for access to contraceptive information and services, care for sexually transmitted infections (STIs), maternal health care, counseling and services for survivors of sexual and gender-based violence, and safe abortion services.² In 2019, UNFPA estimates found that of the 35 million women and girls of reproductive age requiring humanitarian assistance for reasons related to conflict and natural disasters, at least 5 million were pregnant.³ In addition, 66% of all maternal deaths occur in fragile settings, totaling more than 500 deaths each day. Without access to SRH services, individuals of reproductive age may face significant risks arising from pregnancy, unsafe abortion, STIs, and maternal mortality and morbidity.⁴ In addition to population-wide SRH needs, sexual and gender-based violence (SGBV) in humanitarian settings is widespread and implicates a range of SRH consequences. These consequences disproportionately impact the SRH of women, girls and persons of diverse sexual orientations, gender identities and expressions, and sex characteristics (SOGIESC).

Reflecting the need for SRH care during crisis, the Inter-Agency Working Group for Reproductive Health in Crisis (IAWG) developed the Minimum Initial Service Package (MISP) for Sexual and Reproductive Health, which is a series of crucial, lifesaving minimum activities required to respond to the SRH needs of affected populations at the onset of a humanitarian crisis.⁵ Such services include, but are not limited to, the needs of survivors of SGBV; rather the MISP reflects that SRH needs exist across populations in such settings. However, the MISP is often not fully implemented.⁶ Infrastructure breakdowns, legal and practical barriers to abortion and contraception access, and obstacles for adolescents in accessing SRH continue to lead to suffering and poor reproductive health outcomes, implicating human rights.⁷

Due to numerous challenges, such barriers often persist without legal or political consequences, despite international legal obligations to ensure SRH services, and in spite of the harm it has on affected people. There is a general absence of accountability, remedy and redress for violations of human rights in humanitarian settings. The lack of accountability is heightened in the context of SRH for several reasons. First, accountability in these settings is often interpreted narrowly, either as health outcomes to donors or limited to punishment of individual perpetrators of crimes, rather than being understood to require monitoring, review, and oversight across the range of actors in humanitarian contexts, as well as remedial action for the people affected and policy or program reform. Second, there is an absence of robust data and evidence on the need, provision, and efficacy of comprehensive SRH services in humanitarian settings.⁸ Third, globally there is a lack of prioritization of sexual and reproductive health and rights (SRHR), accountability, and the needs of women and girls, and persons of diverse SOGIESC affected by humanitarian crisis, including in conflict, in national and foreign policies, backed by sufficient resources. Fourth, due to political ideologies, some positions and policies have been intentionally developed to hinder access to comprehensive services, particularly abortion, posing restrictions on humanitarian or other foreign aid.⁹

International human rights law has the most robust protection of sexual and reproductive rights compared to the other branches of international law. At the same time, the various branches of international law apply concurrently, and their protections are complementary and not mutually exclusive.

Additionally, there is a need to strengthen networks, alliances, and partnerships for SRHR in humanitarian settings to address these challenges, including by breaking silos between development, human rights, humanitarian and peace-building sector actors who use different legal and policy frameworks and engage in separate accountability processes.

This summary presents the key findings of a technical paper developed by the Center for Reproductive Rights (the Center) that explains the role that three branches of international law—international human rights law (IHRL), international humanitarian law (IHL), and international criminal law (ICL)—can play in ensuring meaningful accountability and access to SRH services in humanitarian settings, independent as well as complementary to each other.¹⁰ The paper also demonstrates the critical role that IHRL has in helping shape, understand and interpret obligations under other branches of international law in this area. The technical paper draws on four years of legal and field research, and recent consultations held with experts undertaken by the Center.

This paper aims to contribute to the development of improved legal and policy measures on sexual and reproductive health and rights for all persons in humanitarian contexts.

SRH Accountability Mechanism in Uganda Refugee Settlement

In northern Uganda, the Center and CARE International have developed a human rights-accountability mechanism¹¹ to facilitate access to SRH care and ensue an effective remedy for violations of the SRHR of refugee and host community women and girls. The project strengthens the capacity of community representatives to engage with policy makers and program implementers to ensure a human rights-based approach to service provision. It also establishes a mechanism for collection, review, and response of SRH outcomes and service users' SRHR -related complaints when services fall short of human rights standards. The mechanism is supported by an independent third party, with authority to ensure access to an effective remedy when rights are not respected.

The mechanism has addressed complaints relating to refugee women's experiences of disrespect and abuse, discrimination experienced by pregnant adolescents, inaccessible medical equipment for women with disabilities, marginalization of girls from menstrual hygiene kit distribution programs, and violation of rights to privacy concerning SRHRs. Remedies have included changes to government and humanitarian health service providers' policies and practices in line with a commitment to non-repetition. Current project examples include redress through a by-law review process to ensure access to SRH services for adolescents and prevent early forced marriage, public commitments by health sector duty-bearers to increase formal oversight and monitoring of SRH service delivery, and restitution of access to anti-retroviral treatment for incoming refugees.

The project highlights the impact of working directly with duty-bearers and rights-holders in the development of accountability mechanisms and is a rare example of an accountability mechanism with the aim of ensuring access to human rights based SRH services in a humanitarian setting.¹²

II. **Background: Obligations to ensure access to SRH services in humanitarian contexts under International Human Rights Law, International Humanitarian Law and International Criminal Law**

Providing SRH information and services in humanitarian settings for all persons is central not only to an effective response but also for duty-bearers to fulfil their obligations under international law. This section summarizes standards under IHL, ICL, and IHRL concerning SRH in conflict settings, and avenues for accountability. Ensuring accountability for violations of international law is an important legal obligation and a critical human right. Mechanisms for ensuring legal accountability are central to interpreting and enforcing compliance with obligations.¹³

International Human Rights Law

International human rights law establishes state obligations to respect, protect, and fulfil the human rights of those within their territory or subject to their jurisdiction.¹⁴ These duties require States to take legislative, administrative, judicial, fiscal and other measures to create conditions in which people under their effective control can realize their rights.¹⁵ A state is responsible for violations of IHRL and must provide effective remedy for individuals who rights have been violated.¹⁶ Non-state actors, including armed groups, may also have human rights obligations or responsibilities in line with factors such as their capacity and the nature of their control over the enjoyment of human rights by rights-holders.¹⁷ Further, IHRL recognizes the obligations of donor states and international actors to comply with IHRL standards.¹⁸ Violations should lead to compensation and timely, effective and transformative reparations to survivors, guarantees of non-repetition, and adoption of legal and other measures to prevent future violations and abuses.¹⁹ Mechanisms for accountability include U.N. treaty monitoring bodies, regional human rights courts and commissions, and national level legal mechanisms such as courts and national human rights institutions.

SRHR under IHRL

International human rights law has the most robust protection of sexual and reproductive rights compared to the other branches of international law. Human rights relevant to the obligation to provide SRH services can be found in multiple and inter-dependent treaty provisions, including the right to life; the right to be free from torture and other cruel, inhuman, or degrading treatment or punishment; the right to the highest attainable standard of health; the right to privacy; the right to decide the number, spacing and timing of children; the rights to education and to information; and the prohibition of discrimination, including on multiple and intersecting grounds.²⁰ Under IHRL, states are obligated to respect, protect, and fulfil the right to SRH in manner that ensures that all SRH information and services are available, acceptable, accessible, and of good quality.²¹ Human rights bodies have emphasized that states' obligations to guarantee SRHR require not only ensuring persons have access to comprehensive sexual and reproductive health information and services but also taking affirmative measures to improve sexual and reproductive health outcomes and to ensure that persons have the opportunity to make fully informed decisions about their sexuality and reproduction, free from violence, discrimination, and coercion.²²

Failure to provide women with the health services they need, or to restrict or prohibit health services primarily or exclusively needed by women, violates the right to non-discrimination and fosters harmful gender stereotypes.

Human rights law applies in all contexts, including in humanitarian contexts and including during armed conflict.²³ States must therefore respect, protect, and fulfill SRHR in these contexts, including ensuring access to SRH services for all people, including, but not limited to, survivors of gender-based violence. International human rights standards recognizes that in conflict-affected areas, including armed conflict, States parties must “[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.”²⁴

International Humanitarian Law

International humanitarian law only applies during armed conflict.²⁵ The overarching purpose of IHL is, for humanitarian reasons, to limit the effects of armed conflict by limiting the means and method of warfare and protect persons who are not (or are no longer) actively participating in the armed conflict.²⁶ IHL applies in international armed conflict (IAC) and in non-international armed conflict (NIAC), and binds all parties to an armed conflict, including non-state armed groups.²⁷ Significantly, IHL allows for no derogation or reservation.²⁸ IHL also imposes certain obligations on State parties who are not parties to the conflict.²⁹ It is important to note that IHL is a set of legal rules concerning parties to armed conflict, as distinct from international humanitarian principles, which are intended to govern humanitarian action and response.

While individual victims are entitled to reparations for violations under IHL,³⁰ the obligations to do so lie primarily at the national level, with mechanisms including national level courts or tribunals. There are no international mechanisms specific to reviewing compliance with IHL --generally or with regards to individual violations-- despite attempts to create a general compliance mechanism.³¹ Under IHL, parties to conflict must treat all civilians and persons who are *hors de combat* without ‘adverse distinction.’³² This entails taking of all feasible measures to remove and prevent the raising of any barriers that women and girls might face in gaining access to services or protection provided under IHL on par with other civilians and persons *hors de combat*.³³

SRHR under IHL

While IHL does not address sexual and reproductive health in detail, IHL contains important obligations regarding medical treatment as well as the treatment of civilian women, particularly pregnant women³⁴ and survivors of SGBV.³⁵ Rule 134 of the Customary IHL Study provides: “[T]he specific protection, health and assistance needs of women affected by armed conflict must be respected.” This rule applies equally in international armed conflicts and non-international armed conflicts and requires “respect for the person and honour of each, prohibiting violence to life, health and physical and mental well-being, prohibiting outrages upon personal dignity, including humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault, and requiring the separation of women and men in detention.”³⁶ The rule also references IHRL standards to support this approach.³⁷ The ICRC Commentary notes that this encompasses “medical, psychological and social assistance”, including trauma treatment and counselling.³⁸

Accountability for violations of SRH in humanitarian settings remains limited, with the standards that do exist remaining largely limited to SGBV.

The breadth of this responsibility is also recognized in the Commentary, noting that the special protection and care afforded to women 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.”³⁹

International humanitarian law also expressly prohibits sexual violence, which is defined in ICRC Commentary (2016) to include not only rape and enforced prostitution, but also sexual slavery, forced pregnancy, forced sterilization, forced marriage, forced inspections for virginity, sexual exploitation (such as obtaining sexual services in return for food or protection), forced abortions, and sex trafficking.⁴⁰ Customary IHL Study Rule 93 recognizes that “the prohibition of sexual violence is non-discriminatory, i.e., that men and women, as well as adults and children, are equally protected by this prohibition.”⁴¹

International Criminal Law

International criminal law is a body of law designed to proscribe certain categories of conduct and to make those persons who engage in such conduct criminally liable.⁴² While IHL and IHRL are primarily focused on the actions of States and non-state armed groups, ICL focuses on holding *individuals* accountable, and, depending upon the crime, can apply during peacetime or during armed conflict.⁴³ Despite its focus on individual accountability, ICL is very useful as a means of attributing crimes to States when their agents are the ones convicted of violations of ICL, and as such, can facilitate state responsibility. International criminal law plays an important role as a deterrent to international crimes, including SGBV, which have implications on SRH and therefore potential in ensuring some level of accountability for reparations and ensuring access to SRH services.⁴⁴ National courts are the primary mechanism for accountability under ICL. The establishment of *ad hoc* international criminal tribunals and the International Criminal Court also provide a direct mechanism through which to punish violations of ICL.⁴⁵

SRHR under ICL

While ICL does not address access to SRH services and information per se, it does address aspects of SGBV and addresses some egregious reproductive rights violations, such as forced sterilization and forced pregnancy.⁴⁶ The Rome Statute of the International Criminal Court and the Genocide Convention specifically recognize “measures to prevent births within the group” within the meaning of genocide.⁴⁷ However, while the Rome Statute was the first international treaty to criminalize rape and forced pregnancy as crimes against humanity and war crimes, its gender-specific verbiage and its definitions are limiting.⁴⁸ For example, “forced pregnancy” is defined to require the element of unlawful confined/detainment, which can deny accountability where forced pregnancy occurs in conflict without the element of confinement.⁴⁹

Some aspects of IHL and IHRL also constitute part of ICL. For example, serious violations of IHL constituting war crimes, including grave breaches of the Geneva Conventions and their protocols are also part of ICL, as well as part of customary international law, and as such must also be criminalized in national law. This includes acts of sexual violence, including forced pregnancy and forced sterilization, committed in armed conflict which constitute war crimes.⁵⁰

UN Human Rights Council and UN Security Council

UN accountability tools include measures decided by the UN Human Rights Council, and the UN Security Council (UNSC), which consist of member states, and are thus political in nature. These intergovernmental bodies can and do play an important role in holding states and other actors to account for their obligations under international law, including on sexual and reproductive health and rights.

At the Human Rights Council, the resolution on prevention of maternal mortality and morbidity and human rights in humanitarian settings, as well as the resolutions on the Rights of the Child in humanitarian settings and on Child and Early and Forced Marriage (CEFM) in humanitarian settings have created and built on a global momentum to prioritize populations affected by conflict, especially women and girls.⁵¹ Most recently, in October 2020, a resolution titled “Promoting, Protecting and Respecting Women’s and Girls’ Full Enjoyment of Human Rights in Humanitarian Situations” advances a comprehensive approach to promoting, protecting and respecting women’s and girls’ full enjoyment of human rights in humanitarian situations and highlights the need for accountability, as well the need to emphasize the agency and experiences of women and girls as central to the humanitarian response.⁵²

The UN Security Council has passed several resolutions over the past two decades in the context of its Women, Peace and Security (WPS) agenda relating to women and armed conflict.⁵³ It has called on all UN member States to provide “access to the full range of sexual and reproductive health services, including regarding pregnancies resulting from rape, without discrimination” in conflict settings.⁵⁴ More recently the UNSC has faced some challenges to its historical consensus on SRH in conflict. For example, explicit reference to SRH services was eliminated during negotiations on UNSC WPS resolution 2467 in 2019 because of a veto threat. However, the existing normative framework remains intact, and that same resolution makes commitments to fully implement all previous WPS resolutions as well as CEDAW General Recommendation 30 on women and conflict.⁵⁵

III. Key Conclusions

IHRL, IHL and ICL are complementary branches of international law and can mutually strengthen accountability for SRHR in humanitarian settings

The various branches of international law apply concurrently, and that their protections are complementary and not mutually exclusive, has been expressly recognized by international and regional human right bodies and courts.⁵⁶ As such, IHL, ICL, and IHRL can mutually strengthen accountability for SRHR in humanitarian settings, and in doing so prevents gaps in protection, where one branch of law is more robust than another, as is the case of SRHR under IHRL. Similarly, this also prevents accountability vacuums where states may undermine the legitimacy of international human rights law, despite its actual applicability.⁵⁷ The concurrent and complementary application of the various branches of international law will also provide the necessary elements for national or international accountability mechanisms in a range of humanitarian settings, including during armed conflict. Importantly, the complementary nature of all three regimes provides a range of mechanisms for victims of violations to exercise their right to a remedy and to reparation.

While there is scope and potential of IHL and ICL to address some aspects of SRHR, they have largely been under-utilized and under-enforced to date. More generally, legal actions brought against a state for violations of IHL are not common, largely due to jurisdictional questions and available forum, including lack of a specific international accountability mechanisms for IHL. In addition, provisions to fully protect SRHR remain inadequate, outdated and in need of revision. While IHL and ICL both include SRH-related provisions, IHL and ICL-based frameworks are less developed in setting forth obligations on duty bearers or reparations for violations that include SRH services, despite their potential to do so.

Accountability in access to SRH services needs to be strengthened for survivors of SGBV and needs to be expanded to also include SRH needs of *all* individuals, including persons of diverse sexual orientations, gender identities and expressions and sex characteristics.

International human rights law remains legally applicable in all contexts, including in humanitarian settings and including during armed conflict. This means that there is an obligation under international law to guarantee all persons their full range of human rights irrespective of the circumstances or context. As such, IHRL can ensure continuity in accountability, even as a context might cycle from fragile to crisis to conflict and back again. Further, IHRL standards also apply not only to States, but to non-state actors, including armed non-state actors, in certain circumstances, as well as to donor states and other actors.

International human rights law mechanisms can play important role in ensuring accountability for SRH services in all humanitarian settings, including in armed conflict. While not specific to SRH services, international and regional human rights bodies, such as the Inter-American Court of Human Rights, have addressed IHL obligations in some cases. One scholar has argued that “the renewed interest in the relationship between humanitarian law and human rights law relates to victims’ ongoing search for a forum in order to obtain remedies for violations of their rights during armed conflict.”⁵⁸

Sexual and reproductive health and rights are protected under IHRL protections that are exempt from derogation⁵⁹ (e.g. right to life, and to the prohibition of torture or other cruel, inhuman, or degrading treatment or punishment);⁶⁰ recognized as non-derogable core obligations that states must ensure at minimum essential levels (e.g. the right to health);⁶¹ or subject to immediate and cross-cutting obligation (e.g. the right to non-discrimination).⁶² Significantly, almost all UN Member States are party to at least one treaty that has a non-derogable right that has been interpreted to create state obligations to ensure access to at least some SRH services, including abortion and emergency contraception. States have an obligation under IHRL to ensure their laws, policies and practices are in compliance with IHRL and should at a minimum, be guaranteeing the provision of SRHR services, including abortion, in accordance with IHRL obligations. In addition, retrogressive measures in the enjoyment of the core obligations to ensure economic and social rights, such as the right to sexual and reproductive health, cannot be justified exclusively on the basis of the existence of a crisis or conflict: States have to demonstrate that any retrogression was unavoidable and that all the possible measures have been taken, including seeking international cooperation and assistance, to overcome the resource constraints.⁶³

The continued applicability of IHRL in humanitarian settings, including in armed conflict, means that states are obligated to take positive action to ensure SRHR are respected, protected, and fulfilled and to do their utmost to mitigate the impacts of the conflict to avoid health system disruption. For example, the Human Rights Committee’s General Comment 36 reinforces that restrictions on the ability of women or girls to seek abortion must not jeopardize their lives, subject them to physical or mental pain or suffering which violates article 7 of the ICCPR.⁶⁴ Due to the extreme conditions persons face in some humanitarian settings, a pregnancy in such a setting *alone* could lead to such pain or suffering for an individual that a denial of a request for an abortion could rise to a violation of cruel, inhuman and degrading treatment, and given the lack of available SRH services in such settings, could also jeopardize the right to life. It is important to note that the CEDAW Committee sets forth an

approach which supports this. It calls for States parties to ensure access to “safe abortion services, in the context of conflict,⁶⁵ without conditioning such services on a minimum grounds-based approach, (e.g., life, health, rape or severe fetal impairment), and like all human rights standards, does not limit State obligations to only circumstances in which abortion services are legal.

SRHR standards under International Human Rights Law are complementary to and mutually reinforce other bodies of International Law

The strong standards for SRHR under IHRL are also important both because of “complementarity” – an aspect of international law recognizing the mutually reinforcing and complementary nature of various branches of international law--and that the relevant standards of IHL and ICL should be interpreted in a manner consistent with IHRL.⁶⁶

Two rights comprising SRHR, including access to SRH services, in IHRL are the right to be free from discrimination and the non-derogable right to be free from torture and other cruel, inhuman, and degrading treatment or punishment. Analogous protections can be found in ICL and in IHL in the rule of “no adverse distinction” and in the guarantee of “humane treatment,” and the prohibition of torture and other ill treatment and outrages upon personal dignity. While IHL and ICL have not applied these protections to the context of access to SRH services specifically, the relevant standards under IHL and ICL should be interpreted in a manner consistent with IHRL.

Reflecting the linkages between these guarantees, the relevant rule of IHL establish, for example, that “no adverse distinction” should be interpreted consistently with state obligations recognized under the right to non-discrimination in IHRL⁶⁷ and as such, would include SRHR. The IHRL guarantee of non-discrimination helps in understanding the scope and nature of state obligations to address the specific health needs of women and girls, and persons of diverse SOGIESC.⁶⁸ For example, IHRL recognizes that the failure to provide women with the health services they need or to restrict or prohibit health services primarily or exclusively needed by women violates the right to non-discrimination and fosters harmful gender stereotypes.⁶⁹ International human rights law also recognizes that the protection of non-discrimination in access to SRH services and generally, includes persons with disabilities and persons of diverse SOGIESC, as well as others.⁷⁰

SRHR for Persons of Diverse SOGIESC in Humanitarian Settings

An example of how IHL, ICL, and IHRL can mutually strengthen accountability for SRHR in humanitarian settings is in creating more inclusive frameworks that address denial of SRH services for persons of diverse sexual orientations, gender identities and expressions and sex characteristics in humanitarian settings, who are among the most vulnerable in such settings due to compounded discrimination.⁷¹ While non-discriminatory treatment is prohibited under IHL on grounds of sex and on ‘any other distinction founded on similar criteria,’⁷² protection of persons of diverse SOGIESC are not expressly mentioned and have not generally been interpreted as such under IHL. However, the 2020 commentary on the IHL convention governing the treatment of prisoners of war, interprets some protections on grounds of ‘gender’ and ‘sexual and gender minorities.’⁷³ In addition, while violence against all persons is always prohibited under IHL, which would include persons of diverse SOGIESC, the generally binary construct in IHL as either male or female and lack of any robust interpretation that includes persons of diverse SOGIESC, leads to gaps in ensuring the full range of protection and redress for people who have experienced violations, including SGBV directly motivated by their gender expressions and identities during armed conflict.⁷⁴

Similarly, with regards to interpretation of humane treatment, the ICRC notes that “the detailed rules found in international humanitarian law and human rights law give expression to the meaning of humane treatment” and that “this notion develops over time under the influence of changes in society”.⁷⁵ International human rights law has recognized that state obligations to prevent cruel, inhuman or degrading treatment include preventing delays or denial of safe abortion or post-abortion care, forced sterilization, and denial of emergency contraception to rape survivors.⁷⁶

Notably, despite the SRH-related guarantees in IHRL, ICL, and IHL, accountability mechanisms under these bodies of law have yet to effectively address the SRH needs of persons subject to SGBV, which is the most commonly addressed violation against women in humanitarian settings, particularly in conflict. For example, in a recent CEDAW Committee case concerning a survivor of SGBV in conflict who as a result faced cervical cancer and trauma that prevented her from engaging in sexual intercourse, the Committee rightly issued remedy for the state’s delay in providing an effective and timely investigation of the sexual violence; however, the judgment did not directly discuss or address the impact on her SRHR, even despite its own General Comment 30, which set forth state obligations to address the impact that sexual violence in conflict and post-conflict situations has on reproductive health.⁷⁷

The diverse branches of law discussed in this paper, particularly international humanitarian law and international criminal law, should be reexamined and more broadly interpreted in light of such inequalities imbedded in the law.

Intergovernmental and other select tools to support legal accountability

Like UN treaty-monitoring bodies, UN intergovernmental bodies, including the UN Human Rights Council and the UN Security Council, recognize various branches of international law as applying concurrently, and are complementary and mutually reinforcing.⁷⁸ UN intergovernmental bodies hold significant potential as tools for accountability for the SRHR of persons in humanitarian settings. UN Security Council Resolutions 2122 and 2467 on sexual violence in conflict, which are part of the Women Peace and Security Agenda,⁷⁹ and the UN Human Rights Council resolution on women and girls in humanitarian settings,⁸⁰ are a testament to the continuing commitment of states to ensure that individuals can access the full range of SRH services, despite attempts to restrict SRHR in recent years.⁸¹ Such resolutions can in and of themselves be used to further accountability in the intergovernmental sphere, and also play an important role in ensuring that these commitments are translated into binding accountability norms.

In addition, mechanisms mandated by the Human Rights Council such as Commission of Inquiries and Fact-Finding Missions are some tools for documenting violations of the rights of women and girls and persons of diverse SOGIESC, including of SRHR and SGBV, provided that their mandate specifically and explicitly include such documentation on gender-related issues. Through gender-sensitive and survivor-centred documentation, human rights investigations can capture the scope and impact of violations suffered, while providing a critical analysis of trends concerning violations and human rights concerns in humanitarian settings, including of SRHR.⁸² This information is an important tool for accountability in the humanitarian response.

Conclusion

In recent years, there has been growing recognition of the critical need for SRH services in humanitarian settings including through general comments and recommendations by UN treaty-monitoring bodies, ICRC Commentary, resolutions from UN intergovernmental bodies, and decisions of courts concerning ICL. Despite this, accountability for violations of obligations concerning SRH in humanitarian settings remains limited, with the standards that do exist remaining largely limited to SGBV. While some recognition under international law and under inter-governmental mechanisms of the SRH needs of survivors of SGBV do exist, they are certainly not robust in addressing the full range of services needed. In addition, there is almost no recognition of the need to ensure access to SRH for all persons, including women and girls and persons of diverse SOGIESC, including those subject to SGBV and those who are not. By recognizing the concurrent application, complementary and mutually reinforcing nature of IHL, IHRL, and ICL, this paper outlines several ways that a comprehensive understanding of these branches of international law could strengthen legal accountability for access to SRH services in humanitarian settings.

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ENDNOTES

1. Committee on the Elimination of Discrimination Against Women (CEDAW), *Gen. Recommendation No. 30: On women in conflict prevention, conflict and post-conflict situations*, para. 50, U.N. Doc. CEDAW/C/GC/30 (2013) [hereinafter CEDAW Committee, *Gen. Recommendation No. 30*]; United Nations Population Fund (UNFPA), *Humanitarian Emergencies* (2020), <https://www.unfpa.org/emergencies>; U.N. Human Rights Council, *Preventable maternal mortality and morbidity and human rights in humanitarian settings*, (39th Sess., 2018), UN Doc. A/HRC/39/10 (2018); U.N. Human Rights Council, *Follow-up on the application of the technical guidance on the application of a human rights-based approach to the implementation of policies and programmes to reduce preventable maternal mortality and morbidity*, U.N. Doc. A/HRC/39/26, (Jun. 29, 2018) [hereinafter, U.N. HRC, *Guidance on a human rights-based approach*].
2. CEDAW Committee, *Gen. Recommendation No. 30*, *supra* note 1; United Nations Population Fund (UNFPA), *Humanitarian Emergencies* (2020), <https://www.unfpa.org/emergencies>.
3. United Nations Population Fund (UNFPA), *Humanitarian Action 2019 Overview*, (2019) https://www.unfpa.org/sites/default/files/pub-pdf/UNFPA_HumanitAction_2019_PDF_Online_Version_16_Jan_2019.pdf.
4. *Ibid.*
5. Inter-Agency Working Group on Reproductive Health in Crises, *Minimum Initial Service Package (MISP) for SRH in Crisis Situations*, in *Inter-Agency Field Manual on Reproductive Health in Humanitarian Settings*, (2020) <https://iawgfieldmanual.com/manual>.
6. Inter-Agency Working Group on Reproductive Health in Crises, *Minimum Initial Service Package (MISP) for SRH in Crisis Situations*, in *Inter-Agency Field Manual on Reproductive Health in Humanitarian Settings*, (2020) <https://www.unfpa.org/resources/minimum-initial-service-package-misp-srh-crisis-situations>.
7. CEDAW Committee, *Gen. Recommendation No. 30*, *supra* note 1, paras. 50, 52 (c, d), 54, 57(g), 81(g); Marta Schaaf et al., *Accountability strategies for sexual and reproductive health and reproductive rights in humanitarian settings: a scoping review*, 14 *Conflict and Health*, (2020) <https://doi.org/10.1186/s13031-020-00264-2> [hereinafter, Marta Schaaf, *Accountability for SRHR*].
8. Marta Schaaf, *Accountability for SRHR*, *supra* note 7; Emily Warren et al., *Systematic review of the evidence on the effectiveness of sexual and reproductive health interventions in humanitarian crises*, 5 *BMJ Open* 12, (2015) <http://dx.doi.org/10.1136/bmjopen-2015-008226>.
9. Executive Office of the President, *Memorandum for the Secretary of State, Secretary of Health and Human Services and Administrator of the United States Agency for International Development, The Mexico City Policy*, (Jan. 23, 2017), *Federal Register* (2017), 82(15): 8495, <https://www.gpo.gov/fdsys/pkg/FR-2017-01-25/pdf/2017-01843.pdf>; U.S. Government Accountability Office (GAO), *Global Health Assistance: Awardees' Declinations of U.S. Planned Funding Due to Abortion-Related Restrictions*, (2020), GAO-20-347, <https://www.gao.gov/assets/710/705388.pdf>.
10. Due to the aim of this paper and limited available resources, this paper does not comprehensively address all bodies of international law. Certain bodies of law, including refugee law, are relevant and being explored by the Center elsewhere, but not included here. In discussing accountability for IHL, for which there is no international monitoring or compliance mechanism, this paper relies on the ICRC study of IHL and examples of state practice. However, these examples are not intended to be comprehensive. Further, this paper focuses solely on protection of civilians, while IHL rules are aimed at protected a broader range of persons, including prisoners of war, wounded and sick soldiers, etc. While this paper does discuss ICL, due to its deterrent effect on SGBV, the analysis is limited because the scope of punishment is the individual not the state and because of the high threshold for criminal sanction. Finally, in discussing IHRL, this paper focuses on UN human rights standards and includes only limited presentation of regional human rights standards on SRHR in humanitarian settings. The Center envisions future work in this area. Please see the full technical paper for more detail on scope, aim, and limitations.
11. U.N. HRC, *Guidance on a human rights-based approach*, *supra* note 1, paras. 38, 62 (j). The technical guidance puts forth the concept of a “circle of accountability” that emphasizes that actions to ensure accountability need to happen across all stages of the policy cycle, not only in reaction to alleged violations.”

12. Center for Reproductive Rights press-release, *Center Launches New Program to Protect Refugee Rights in Uganda*, New York, 2020
<https://reproductiverights.org/story/center-launches-new-program-protect-refugee-rights-uganda>.
13. It is important to recognize that there are many other accountability frameworks in addition to legal accountability, such as social and community accountability, and review and monitoring of relevant political commitments such as the SDGs. See, Sara Van Belle et al., *Broadening understanding of accountability ecosystems in sexual and reproductive health and rights: A systematic review*, 13 PlosOne 7, (2018) <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0196788>.
14. See generally, Human Rights Committee, General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, para. 7, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004) [hereinafter Human Rights Comm., Gen. Comment No. 31].
15. See, e.g., Human Rights Committee, *Gen. Comment No. 31, supra* note 14, para. 7.
16. U.N. Office of the High Commissioner for Human Rights (OHCHR), *International Legal Protection of Human Rights in Armed Conflict*, 27 (2011) https://www.ohchr.org/Documents/Publications/HR_in_armed_conflict.pdf [hereinafter, OHCHR, *Legal Protection in armed conflict*].
17. Center for Reproductive Rights, Session III, Expert Convenings 2020; U.N. Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on armed non-State actors: the protection of the right to life, para. 96, U.N. Doc. A/HRC/38/44; CEDAW Committee, Gen. Recommendation No. 30, *supra* note 1, paras. 13-18; OHCHR, *Legal Protection in armed conflict, supra* note 16.
18. Committee on Economic, Social and Cultural Rights (CESCR Committee), Gen. Comment No. 22: On the right to sexual and reproductive health (Art. 12 of the International Covenant on Economic, Social and Cultural Rights), para. 52, U.N. Doc. E/C.12/GC/22 (2016) [hereinafter CESCR Committee, Gen. Comment No. 22]; CEDAW Committee, Gen. Recommendation No. 30, *supra* note 1, paras. 9, 13.
19. See, e.g., CEDAW Committee, Gen. Recommendation No. 30, *supra* note 1, para. 79; Committee on the Elimination of Discrimination against Women (CEDAW Committee), Gen. recommendation No. 35 on gender-based violence against women, updating Gen. Recommendation No. 19, para. 33(b), U.N. Doc. CEDAW/C/GC/35 (2017).
20. See, e.g., CESCR Committee, Gen. Comment No. 22, *supra* note 18, paras. 2, 9, 10, 30-32; See generally, Committee on Economic, Social and Cultural Rights (CESCR Committee), Gen. Comment No. 20: Non-discrimination in economic, social and cultural rights (Art. 2 of the International Covenant on Economic, Social and Cultural Rights), para. 30, U.N. Doc. E/C.12/GC/20 (2009); Human Rights Committee General Comment 36, para 61.
21. CESCR Committee, Gen. Comment No. 22, *supra* note 18, paras. 12-21; Committee on Economic, Social and Cultural Rights (CESCR Committee), Gen. Comment No. 14: The right to the highest attainable standard of health (Art. 12 of the International Covenant on Economic, Social and Cultural Rights), paras. 40, 65, U.N. Doc. E/C.12/2000/4 (2000) [hereinafter CESCR Committee, Gen. Comment No. 14].
22. See, e.g., CESCR Committee, *Gen. Comment No. 22, supra* note 18, paras. 5 and Section IV.
23. See, e.g., OHCHR, *LEGAL PROTECTION IN ARMED CONFLICT, supra* note 16; International Committee of the Red Cross (ICRC), *IHL and human rights law* (2010) <https://www.icrc.org/en/document/ihl-human-rights-law>; *ICJ advisory opinion on the legality of Israel's construction of a Wall*, (2004) <https://www.icj-cij.org/en/case/131/advisory-opinions>; CEDAW Committee, *Gen. Recommendation No. 30, supra* note 1, para. 2.
24. CEDAW Committee, *Gen. Recommendation No. 30, supra* note 1, para. 52(c).
25. See, e.g., *What is International Humanitarian Law?*, ICRC ADVISORY SERV. ON INT'L HUMANITARIAN L. (July 2004), https://www.icrc.org/eng/assets/files/other/what_is_ihl.pdf.
26. *Ibid.*
27. *Ibid.*

28. International Committee of the Red Cross (ICRC), Customary International Humanitarian Law Database, *Introduction to Fundamental Guarantees*, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_intofugu (last visited March 12, 2021).
29. Article 1 common to the Geneva Conventions, *Respect for the Convention*, (Aug. 12, 1949); International Committee of the Red Cross, 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. 1, para. 154, (2d ed. 2016), <https://ihl-databases.icrc.org/ihl/full/GCI-commentary>: “This duty to ensure respect by others compromises both a negative and a positive obligation. Under the negative obligation, High Contracting Parties may neither encourage nor aid or assist in violations of the Convention by parties to a conflict. Under the positive obligations, they must do everything reasonably in their power to prevent and bring such violations to an end”; see also, Article 41 ‘States shall cooperate to bring to an end through lawful means any serious breach within the meaning of article 40 (peremptory norm).’; International Committee of the Red Cross (ICRC), Customary International Humanitarian Law Database, *Rule 144*, https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule144 (last visited March 12, 2021); See also, box on Non-state actors.
30. International Committee of the Red Cross (ICRC), Customary International Humanitarian Law Database, *Rule 150*, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule150 (last visited March 12, 2021) [hereinafter ICRC, Customary IHL Database].
31. International Conference of the Red Cross and Red Crescent (32nd), *Strengthening compliance with international humanitarian law*, Resolution, 32/C/15/R2 (2015), https://rcrcconference.org/app/uploads/2015/04/32IC-AR-Compliance_EN.pdf; ICRC, *Strengthening compliance with international humanitarian law: The work of the ICRC and the Swiss government (2012-2015)*, (2016) <https://www.icrc.org/en/document/strengthening-compliance-international-humanitarian-law-ihl-work-icrc-and-swiss-government>; See also, Oxford University Press *The 1949 Geneva Conventions*, A Commentary at 1287, paras. 51-53 (Andrew Clapham, Paola Gaeta and Marco Sassoli, eds. 2015), referencing U.N. Compensation Commission established by the U.N. Security Council regarding claims and awards to women who suffered sexual assault arising from the Gulf Conflict 1990-91.
32. See Common Article 3 to the Geneva Conventions: Geneva Convention I, Art 3; Geneva Convention for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea, Art. 3, Aug. 12, 1949, 75 U.N.T.S. 85; Geneva Convention Relative to the Treatment of Prisoners of War, Art. 3, Aug. 12, 1949; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Art. 3, Aug. 12, 1949; See also Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Art. 27(4), Aug. 12, 1949; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflict (Protocol I), Art. 75 (1) June 8, 1977, 1125 U.N.T.S. 3 art 75 (1); Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), Art. 4 (1), June 12, 1977, 1125 U.N.T.S. 609 .
33. See, e.g., 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, Article 3, paras. 573-578 (2d ed. 2016), <https://ihl-databases.icrc.org/ihl/full/GCI-commentaryArt3> [hereinafter, ICRC, 2016 Commentary on Geneva Convention I].
34. ICRC, Customary IHL Database, *Rule 134*, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter39_rule134 (last visited March 12, 2021); ICRC, *2016 Commentary on Geneva Convention I*, *supra* note 33, Art. 12, paras. 1429-1430; Akila Radhakrishnan et. al., *Protecting safe abortion in humanitarian settings: overcoming legal and policy barriers*, Reproductive Health Matters Journal, Vol. 25 (2017) [hereinafter, Akila Radhakrishnan, *Protecting safe abortion in humanitarian settings*]
35. Oxford University Press *The 1949 Geneva Conventions*, A Commentary p. 7623, para. 26 (Andrew Clapham, Paola Gaeta and Marco Sassoli, eds. 2015) Akila Radhakrishnan, *Protecting safe abortion in humanitarian settings*, *supra* note 34.

36. ICRC, Customary IHL Database, *Rule 134*, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter39_rule134 (last visited March 12, 2021).
37. *Ibid.*
38. ICRC, 2016 Commentary on Geneva Convention I, *supra* note 33, Art. 12, paras. 1429-1430.
39. *Ibid.*
40. ICRC, 2016 Commentary on Geneva Convention I, *supra* note 33.
41. ICRC, Customary IHL Database, *Rule 93*, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule93 (last visited March 12, 2021); Center for Reproductive Rights, Expert Convenings 2020.
42. Antonio Cassese, *International Criminal Law* (2nd ed. 2008).
43. Leila Nayda Sadat, Putting Peacetime First: Crimes Against Humanity and the Civilian Population Requirement, 31 *Emory int'l. law review* (2017); Vincent Bernard and Helen Durham, Editorial: Sexual Violence in Armed Conflict: From Breaking the Silence to Breaking the Cycle, 96 *International Review of the Red Cross* 894, 431-432 (2014).
44. Center for Reproductive Rights, Expert Convenings 2020.
45. See, e.g., Gloria Gaggioli, Sexual violence in armed conflicts: A violation of international humanitarian law and human rights law, 96 *Int'l. Review of the Red Cross* 894 (Summer 2014).
46. See, e.g., *The Prosecutor v. Dominic Ongwen*, ICC-02/04-01/05, Trial Judgement (Feb. 4, 2021).
47. Convention on the Prevention and Punishment of the Crime of Genocide Art. II, adopted Dec. 9, 1948, U.N. Doc. A/RES/3/260; Rome Statute of the International Criminal Court, Art. 6, (July 17, 1998), U.N. Doc. A/CONF.183/9 (entered into force July 1, 2002).
48. Valerie Oosterveld, *The Definition of "Gender" in the Rome Statute of the International Criminal Court: A Step Forward or Back for International Criminal Justice*, 18 *Harvard Human Rights Journal*; See also, Rosemary Grey et al., *Gender-based Persecution as a Crime Against Humanity: The Road Ahead*, 17 Oxford University Press (2019); Shayna Rogers, *Article: Sexual violence or rape as a constituent act of genocide: lessons from the ad hoc tribunals and a prescription for the international criminal court*, 48 *Geo. Wash. Int'l L. Rev.* 265 (2016).
49. Amnesty International, *Forced Pregnancy a Commentary on the Crime in International Criminal Law* (2020) <https://www.amnesty.org/download/Documents/IOR5327112020ENGLISH.pdf>.
50. See, ICRC, Customary IHL Database, *Rule 156*, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule156 (last visited March 12, 2021); Oxford University Press *The 1949 Geneva Conventions, A Commentary* p. 1288, para. 56 (Andrew Clapham, Paola Gaeta and Marco Sassoli, eds. 2015). States are also allowed to criminalize under national law other violations of IHL not listed in Geneva Conventions as grave breaches or in the ICC Statute as war crimes. Note: acts of sexual violence may also be considered crimes against humanity, or a constitutive act of genocide, committed in connection or not, with an armed conflict.
51. U.N. Human Rights Council, Preventable maternal mortality and morbidity and human rights in humanitarian settings, (39th Sess., 2018), U.N. Doc. A/HRC/39/10 (2018); U.N. Human Rights Council, Rights of the child: protection of the rights of the child in humanitarian situations, (37th Sess., 2018), U.N. Doc. A/HRC/37/L.33 (2018); U.N. Human Rights Council, Child, early and forced marriage in humanitarian settings, (35th Sess., 2017), U.N. Doc. A/HRC/Res/35/16 (2017).
52. U.N. Human Rights Council, *Resolution adopted by the Human Rights Council on 7 October 2020*, (45th Sess., 2020), U.N. Doc. A/HRC/RES/45/29 (2020).
53. U.N. Press Release, *Security Council Urges Recommitment to Women, Peace, Security Agenda, Unanimously Adopting Resolution 2493*, New York, 2019; <https://www.un.org/press/en/2019/sc13998.doc.htm>
54. U.N. SCOR, Resolution 2122 (2013), U.N. Doc. S/Res/2122 (2013).

55. Committee on the Elimination of Discrimination Against Women (CEDAW Committee), *Gen. Recommendation No. 30: On women in conflict prevention, conflict and post-conflict situations*, U.N. Doc. CEDAW/C/GC/30 (2013) [hereinafter, CEDAW Committee, *Gen. Recommendation No. 30*].
56. See, e.g., OHCHR, Legal Protection in armed conflict, *supra* note 16; CEDAW Committee, *Gen. Recommendation No. 30*, *supra* note 55, paras. 19-24.
57. See, e.g., U.N. Human Rights Council, *Human rights situation in the Occupied Palestinian Territory, including East Jerusalem* U.N. Doc. A/HRC/28/45 (2015).
58. Christine Evans, *The Right to Reparation in International Law for Victims of Armed Conflict* 33 (2012) <http://www.corteidh.or.cr/tablas/r31595.pdf>.
59. There are clear criteria controlling the circumstances of when derogation is permissible and scope of restrictions on these rights. Under IHRL, it is possible for States to derogate from some of their obligations “in time[s] of public emergency which threatens the life of the nation...”, for example, This restriction on rights during a certain period of time. It is articulated, for example, under Article 4 of the International Covenant on Civil and Political Rights (ICCPR) regarding derogation in time of public emergencies. However, derogation only applies to certain articles of the Covenant. It has procedural and substantive limitations, including that derogations cannot be “inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin”. In addition, States parties may in no circumstances invoke Article 4 of the Covenant in a way that would result in derogation of a non-derogable right or as justification for violating humanitarian law or preemptory norms of international law. See, Human Rights Committee, *Gen. Comment No. 29: States of emergency (Article 4)*, (72nd Sess., 2001), in *Compilation of Gen. Comments and Gen. Recommendations Adopted by Human Rights Treaty Bodies*, paras 1,2, 4, 11 and 15, U.N. Doc. CCPR/C/21/Rev.1/Add.11 (2001) [hereinafter, Human Rights Committee, *Gen. Comment No. 29*]; United Nations Economic and Social Council (ECOSOC), *Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights*, annex, U.N. Doc E/CN.4/1984/4 (1984); See also, Human Rights Committee, *Statement on derogations from the Covenant in connection with the COVID-19 pandemic*, U.N. Doc. CCPR/C/128/2 (2020).
60. Human Rights Committee, *Gen. Comment No. 36: On the right to life (Art. 6 of the International Covenant on Civil and Political Rights)*, para. 2, U.N. Doc. CCPR/C/GC/36 (2018) [hereinafter Human Rights Committee, *Gen. Comment No. 36*]; Human Rights Committee, *Gen. Comment No. 29*, *supra* note 59, para. 7; See also, U.N. Office of the High Commissioner for Human Rights, *Core Human Rights in the Two Covenants* (2013).
61. CESCR Committee, *Gen. Comment No. 14*, *supra* note 21, para. 32; CESCR Committee, *Gen. Comment No. 22*, *supra* note 18, para. 49.
62. Committee on Economic, Social and Cultural Rights (CESCR Committee), *Gen. Comment No. 20: Non-discrimination in economic, social and cultural rights (Art. 2 of the International Covenant on Economic, Social and Cultural Rights)*, U.N. Doc. E/C.12/GC/20 (2009); See also, *Convention on the Elimination of All Forms of Discrimination against Women*, adopted Dec. 18, 1979, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46, U.N.T.S. 13 (entered into force Sept. 3, 1981); Human Rights Committee, *Gen. Comment No. 29*, *supra* note 59, paras. 11, 15.
63. U.N. Office of the High Commissioner for Human Rights (OHCHR), *Report of the United Nations High Commissioner for Human Rights*, U.N. Doc. E/2015/59 (2015); CESCR Committee, *Gen. Comment No. 14*, *supra* note 21, para. 32; See also, CESCR Committee, *Gen. Comment No. 22*, *supra* note 18, para. 37.
64. Human Rights Committee, *Gen. Comment No. 36*, *supra* note 60, para. 8.

65. Committee on the Elimination of Discrimination Against Women (CEDAW Committee), *Gen. Recommendation No. 30: On women in conflict prevention, conflict and post-conflict situations*, para. 52(c), U.N. Doc. CEDAW/C/GC/30 (2013); Human Rights Committee, *Gen. Comment No. 36: On the right to life (Art. 6 of the International Covenant on Civil and Political Rights)*, para. 8, U.N. Doc. CCPR/C/GC/36 (2018).
66. Human Rights Committee, Gen. Comment No. 31, *supra* note 14, para. 11; Human Rights Committee, Gen. Comment No. 36, *supra* note 60, para. 64, 65; CEDAW Committee, Gen. Recommendation No. 30, *supra* note 1, para. 20.
67. CRC, Customary IHL Database, Rule 87, https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule87 (last visited March 12, 2021).
68. CESCR Committee, *Gen. Comment No. 22, supra* note 18, paras. 22-24.
69. Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 24: Article 12 of the Convention (Women and Health)*, para. 14, U.N. Doc. A/54/38/Rev. 1 (1999); *See also* CESCR Committee, *Gen. Comment No. 22, supra* note 18, paras. 22–28; International Covenant on Economic, Social and Cultural Rights *Gen. Comment No. 20: Non-discrimination in economic, social and cultural rights (Art. 2 of the International Covenant on Economic, Social and Cultural Rights)*, para. 59, U.N. Doc. E/C.12/GC/20 (2009); *L.C. v. Peru*, Communication No. 22/2009, UN Doc. CEDAW/C/50/D/22/2009 (25 November 2011)
70. *See, e.g.*, CESCR Committee, *Gen. Comment No. 22, supra* note 18, paras. 22-24.
71. Lisa Davis, Jessica Stern, *WPS and LGBTI Rights*, THE OXFORD HANDBOOK OF WOMEN, PEACE, AND SECURITY (2018).
72. ICRC, Customary IHL Database, *Rule 88*, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule88 (last visited March 12, 2021).
73. *See*, ICRC, 2020 Commentary on Convention (III) relative to the Treatment of Prisoners of War, Art. 14, para. 1864, (2020), <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=752A4FC9875177D2C12585850043E743>, Studies have found much higher rates of sexual violence against sexual and general minorities than against the general population of incarcerated persons; *See*, Gabriel Arkles, *Safety and Solidarity Across Gender Lines: Rethinking Segregation of Transgender People in Detention*, TEMPLE POLITICAL & CIVIL RIGHTS LAW REVIEW, Vol. 18, No. 2 (2009), p. 515–560, 517, 526; Tasha Hill, *Transgender Military Inmates’ Legal and Constitutional Rights to Medical Care in Prisons: Serious Medical Need versus Military Necessity*, VERMONT LAW REVIEW, Vol. 39, No. 2 (2014), p. 411–459, 426.
74. Lisa Davis, Jessica Stern, *WPS and LGBTI Rights*, THE OXFORD HANDBOOK OF WOMEN, PEACE, AND SECURITY (2018).
75. ICRC, Customary IHL Database, *Rule 87*, https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule87 (last visited March 12, 2021).
76. Human Rights Committee, *Gen. Comment No. 36, supra* note 60, para. 8; Committee against Torture (CAT Committee), *Concluding Observations: Greece*, paras. 24, 25, U.N. Doc. CAT/C/GRC/7 (2018); Committee against Torture (CAT Committee), *Concluding Observations: Poland*, para. 33(d), U.N. Doc. CAT/C/POL/CO/7 (2019).; CAT Committee, *Concluding Observations: United Kingdom of Great Britain and Northern Ireland*, para. 46, U.N. Doc. CAT/C/GBR/CO/6 (2019). Committee on the Elimination of Discrimination against Women (CEDAW Committee), Views adopted by the Committee under article 7(3) of the Optional Protocol, concerning communication No. 116/2017, U.N. Doc. CEDAW/C/76/D/116/2017 (2020); CEDAW Committee, Gen. Recommendation No. 30, *supra* note 1, paras. 38 (g) and 81(g).
77. Committee on the Elimination of Discrimination against Women (CEDAW Committee), *Views adopted by the Committee under article 7(3) of the Optional Protocol, concerning communication No. 116/2017*, U.N. Doc. CEDAW/C/76/D/116/2017 (2020); CEDAW Committee, *Gen. Recommendation No. 30, supra* note 1, paras. 38 (g) and 81(g).
78. *See, e.g.*, U.N. Human Rights Council, *Resolution adopted by the Human Rights Council on 7 October 2020*, (45th Sess., 2020); U.N. Doc. A/HRC/RES/45/29 (2020); U.N. SCOR, *Resolution 1325 (2000)*, U.N. Doc. S/Res/1325 (2000).
79. U.N. SCOR, *Resolution 2122 (2013)*, U.N. Doc. S/Res/2122 (2013); U.N. SCOR, *Resolution 2467 (2019)*, U.N. Doc. S/Res/2467 (2019).

80. U.N. Human Rights Council, *Resolution adopted by the Human Rights Council on 7 October 2020*, (45th Sess., 2020), U.N. Doc. A/HRC/RES/45/29 (2020).
81. Christine Chinkin, Madeline Rees, *Commentary on Security Council Resolution 2467*, Women's int'l. League for peace and freedom, (2019) https://www.wilpf.org/wp-content/uploads/2019/07/19_0496_WPS_Commentary_Report_online.pdf.
82. See e.g., U.N. Human Rights Council, *Human rights in the Bolivarian Republic of Venezuela*, (45th Sess., 2019), U.N. Doc. A/HRC/41/18 (2019); U.N. Office of the High Commissioner for Human Rights, *Access to Health for Survivors of Conflict-Related Sexual Violence in South Sudan*, (May 2020) https://www.ohchr.org/Documents/Countries/SS/access_to_health_for_survivors_of_conflict-related_sexual_violence_in_south_sudan.pdf.