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## **Violations of the right to maternal health and sexual and reproductive health under the Covenant in times of armed conflicts as war crimes**

**Input submitted by  
International Protection of Human Rights Legal Clinic  
Roma Tre University**

### **The Roma Tre International Protection of Human Rights Legal Clinic**

This input is submitted by the Roma Tre International Protection of Human Rights Legal Clinic. Founded in 2014 by Prof. Alice Riccardi, the Clinic is an educational programme fostering the growth of human rights knowledge while promoting social justice. The Clinic works both as a client-based and as a desk-study pro bono legal clinic. In the former capacity, it focuses on strategic litigation on human rights. Over the years, it has appeared or assisted in proceedings before the Appeals Chamber of the International Criminal Court, the European Court of Human Rights, the UN CEDAW, and the UNSC ISIL (Da'esh) & Al-Qaida Sanctions Committees. In the latter capacity, the Clinic *inter alia* submitted its inputs to the UN Special Rapporteur on the Human Rights of Migrants and in the context of the latest cycle of the UN UPR concerning Italy. Furthermore, the Clinic has partnered with UNHCR, the Tribunal of Rome, and local NGOs.

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1. This input is meant to assist the Committee on Economic, Social and Cultural Rights (CESCR or the Committee) in drafting its new General Comment on the application of the International Covenant on Economic, Social and Cultural Rights (ICESCR or the Covenant) in situations of armed conflicts, by focusing on violations of the right to maternal health and sexual and reproductive health (MH-SRH) as underlying the commission of war crimes.
2. During armed conflicts, access to health care for women, including sexual and reproductive health services, is often disrupted. This exposes women to greater risks of unplanned pregnancy, severe sexual and reproductive injuries, and contracting sexually transmitted infections,<sup>1</sup> often as a result of sexual violence. Moreover, practice shows that gender-based violence, including violence against MH-SRH, is not only pervasive during armed conflicts, but intentionally employed as a method of warfare, thereby possibly constituting war crimes.<sup>2</sup> While international crimes are usually connected to violations of civil and political rights, an overlap may arise also with the ICESCR, when the same conduct against MH-SRH constitutes both a violation of the Covenant and a war crime committed by an individual. If the perpetrator is a State organ, the State's failure to respect the Covenant is engaged; if the perpetrator is a private, it may trigger a failure to protect.
3. This input submits that evaluating mentioned conducts falls squarely within the Committee's mandate, allowing it to assess States Parties' compliance with the Covenant when war crimes target MH-SRH.

## **The right to maternal health and sexual and reproductive health**

### ***Legal framework and definitions***

4. The rights to MH-SRH form part of the normative content of the right to health under Article 12 ICESCR. This follows from the Covenant itself which, in Article 12(2)(a), requires States to take measures for 'the reduction of the stillbirth rate and of infant mortality and for the healthy development of the child', while Article 10(2) provides special protection for mothers before and after childbirth. Building upon these provisions, the Committee has interpreted the RtH as encompassing MH-SRH.<sup>3</sup>
5. While the ICESCR provides the most authoritative articulation of the right to health, other international human rights treaties reinforce the recognition of MH-SRH rights. At the United Nations (UN) level, Article 12 of the Convention on the Elimination of All Forms of Discrimination against Women provides the obligation of access to health care services related to pregnancy and family planning, whereas Article 24 of the Convention on the Rights of the Child requires pre- and post-natal health care for mothers. These provisions confirm that MH-SRH are integral components of the broader international protection afforded to the right to health.

### ***The content of State obligations relating to MH-SRH***

6. The Committee articulates States' obligations under the right to health through the framework of the obligations to respect, protect and fulfil.<sup>4</sup> The obligation to *respect* is primarily negative, prohibiting States from interfering with the enjoyment of the right to health. This includes refraining from denying equal access to sexual and reproductive health services and information, and from imposing discriminatory practices affecting women's healthcare.<sup>5</sup> The obligation to

<sup>1</sup> CEDAW 'General Recommendation No 30 on women in conflict prevention, conflict and post-conflict situations' (1 November 2013) UN Doc CEDAW/C/GC/30 (GR No 30) para 50.

<sup>2</sup> ICRC, *Commentary on the fourth Geneva Convention: Convention (IV) relative to the Protection of Civilian Persons in Time of War* (2<sup>nd</sup> ed, 2025) (GCIV Commentary) para 3452.

<sup>3</sup> CESCR 'General Comment No 14: The Right to the Highest Attainable Standard of Health' (11 August 2000) UN Doc E/C.12/2000/4 (GC No 14) para 14.

<sup>4</sup> GC No 14, para 33; CESCR 'General Comment No 22 on the right to sexual and reproductive health' (2 May 2016) UN Doc E/C.12/GC/22 (GC No 22) para 39.

<sup>5</sup> GC No 14, paras 33-34; GC No 22, para 40.

*protect*, in turn, requires States to take positive measures to prevent third parties from undermining the full enjoyment of the right to health,<sup>6</sup> including access to pre- and post-natal care and family planning, and protection from gender-based violence,<sup>7</sup> and investigate and punish violations, and offer redress.<sup>8</sup> The more far-reaching obligation to *fulfil* requires that public health infrastructures provide MH-SRH services, ‘including safe motherhood’, and that a sufficient number of hospitals and clinics offering such services are available and equitably distributed.<sup>9</sup>

### ***The nature of State obligations related to MH-SRH and minimum core obligations***

7. Pursuant to Article 2(1) ICESCR, the right to health, including its component the right to MH-SRH, is subject to the principle of progressive realization. Notably, States are required to take steps towards realization of rights to the maximum of the resources available both within the State and through external international cooperation and assistance. Accordingly, the obligations of ICESCR States Parties are obligations of conduct, implying a continuous effort towards achieving a certain goal.<sup>10</sup>
8. In order not to deprive obligations under the Covenant of their meaning, the Committee established that the standard of conduct required of States Parties is, firstly, to ‘move as expeditiously and effectively as possible towards’ full realization;<sup>11</sup> and, secondly, to ensure immediately the minimum essential level of rights.<sup>12</sup> This requires them to make every effort ‘to use all resources that are at [their] disposition in an effort to satisfy, as a matter of priority, those minimum obligations.’<sup>13</sup>
9. The Committee understands the minimum core of the right to health broadly, as including: equitable distribution and indiscriminatory access to health facilities, goods and services,<sup>14</sup> access to minimum essential food, basic shelter, housing, sanitation, potable water,<sup>15</sup> and access to essential medicines at all times.<sup>16</sup> Accessibility must be guaranteed particularly to vulnerable and marginalized groups.<sup>17</sup> Women, especially pregnant women, fall into this category under both human rights<sup>18</sup> and international humanitarian law (IHL), the latter affording special protection to women during armed conflicts.<sup>19</sup>
10. The minimum core of MH-SRH involves the prohibition of practices such as FGM, the provision of abortion-related care and access to essential medicines,<sup>20</sup> including those for reproductive

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<sup>6</sup> GC No 14, para 33.

<sup>7</sup> GC No 14, para 35; GC No 22, para 42.

<sup>8</sup> GC No 22, para 64.

<sup>9</sup> GC No 14, paras 36-37.

<sup>10</sup> CESCR ‘General Comment No 3: The Nature of States Parties’ Obligations’ (14 December 1990) UN Doc E/1991/23 (GC No 3) para 9; Alice Ollino, *Due Diligence Obligations in International Law* (CUP 2022) 124.

<sup>11</sup> GC No 3, para 9.

<sup>12</sup> GC No 3, para 10; GC No 14, para 43.

<sup>13</sup> GC No 3, para 10.

<sup>14</sup> GC No 14, para 43(a), (e); GC No 22, para 49(c).

<sup>15</sup> GC No 14, para 43(b), (c).

<sup>16</sup> GC No 14, para 43(d); UNCHR ‘Analytical study on key challenges in ensuring access to medicines, vaccines and other health products in the context of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health’ (2 July 2024) UN Doc A/HRC/56/28, para 41.

<sup>17</sup> GC No 14, para 43(a).

<sup>18</sup> UNGA ‘Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health’ (10 August 2009) UN Doc A/64/272, paras 38, 55; HRC, ‘Violence and its impact on the right to health’ (14 April 2022) UN Doc A/HRC/50/28, para 16.

<sup>19</sup> Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law, Vol I* (CUP 2009) (CIHL) Rule 134, 475ff; Geneva Convention Relative to the Protection of Civilian Persons in Time of War (12 August 1949) 75 UNTS 287 (GCIV) arts 14, 23; Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (8 June 1977) 1125 UNTS 3, arts 70(1), 76.

<sup>20</sup> GC No 22, para 49(d),(e),(g).

health and perinatal care, such as contraceptives, medicines for medical abortion or for newborns.<sup>21</sup>

11. In its General Comment No. 14, the Committee identified reproductive, maternal and child healthcare as ‘obligations of comparable priority’.<sup>22</sup> We hold that, in the context of MH-SRH, obligations of comparable priority carry substantially the same legal weight as core obligations. Indeed, in General Comment No. 22 the Committee placed reproductive health among core obligations.<sup>23</sup> Moreover, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health described the ‘minimum basket of health-related services and facilities’ as encompassing family planning, emergency obstetric care, prenatal and postnatal services.<sup>24</sup>

### ***State obligations related to MH-SRH in times of armed conflict***

12. ICESCR States Parties incur in the obligation to grant enjoyment to MH-SRH rights at all times, including during armed conflicts. In this context, ICESCR obligations must be systemically integrated with applicable rules of IHL,<sup>25</sup> while the most protective regime shall always find application. Accordingly, the standard established under Article 2(1) ICESCR, whereby States must undertake their best possible efforts while ensuring at minimum core rights, also applies to conflict scenarios and occupations.
13. Notably, the content of States’ due diligence in these contexts underwent a process of proceduralisation through treaties and soft law. The steps that States must undertake depend on the hostilities’ concrete effects on their capacity to realise ICESCR rights. With respect to MH-SRH, States are required to behave as follows.
14. First, States bear MH-SRH-related obligations in full, when the concrete circumstances of the armed conflict do not impact their capacity to take steps towards the full realization of rights. The Committee established that where there is no apparent justification for a reduction of public expenditure, the State might be considered to have violated the Covenant.<sup>26</sup> Read in harmony with relevant IHL rules, this requires States Parties not to interfere with and guarantee women in conflict-affected areas access to health services including maternal health care,<sup>27</sup> treatment of injuries arising from sexual violence,<sup>28</sup> sexual and reproductive health care,<sup>29</sup> including for survivors of sexual violence,<sup>30</sup> safe abortion services,<sup>31</sup> emergency contraception, prevention and treatment of sexually transmitted diseases.<sup>32</sup> Moreover, parties to armed conflicts must ensure the free passage of essential medical supplies,<sup>33</sup> in particular for pregnant women and new mothers,<sup>34</sup>

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<sup>21</sup> WHO ‘The selection and use of essential medicines, 2025: WHO Model List of Essential Medicines, 24th list’ (2025) 54-56.

<sup>22</sup> GC No 14, para 44(a).

<sup>23</sup> GC No 22, para 49(a),(c)-(g).

<sup>24</sup> HRC ‘Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt’ (31 January 2008) UN Doc A/HRC/7/11, para 52; Center for Reproductive Rights and Women Advocate Resource and Documentation Centre, ‘Broken promises: human rights, accountability, and maternal death in Nigeria’ (2008) 39.

<sup>25</sup> Vienna Convention on the Law of Treaties (23 May 1969) 1155 UNTS 331, art 31(3)(c). International Law Commission (ILC), ‘Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law. Report of the Study Group of the International Law Commission’ (2006) UN Doc A/CN.4/L.702, paras 17 ff.

<sup>26</sup> Scott Leckie, ‘Another Step towards Indivisibility: Identifying the Key Features of Violations of Economic, Social and Cultural Rights’ (1998) 20 Human Rights Quarterly 81.

<sup>27</sup> GR No 30, para 57; GCIV Commentary, para 1707; Yves Sandoz et al (eds), *Commentary on the Additional Protocols to the Geneva Conventions* (Nijhoff 1987) para 4693; CIHL, Rule 134.

<sup>28</sup> GR No 30, para 57; GCIV Commentary, para 1696.

<sup>29</sup> GR No 30, para 57; GCIV Commentary, para 2320.

<sup>30</sup> GCIV Commentary, para 1696 fn 22.

<sup>31</sup> GR No 30, para 57; GCIV Commentary, para 1707 fn 48.

<sup>32</sup> GR No 30, para 57.

<sup>33</sup> CIHL, Rule 29.

<sup>34</sup> GCIV Commentary, para 2022.

and supplies necessary for sexual and reproductive health, emergency contraception, and medicines to treat sexually transmitted disease.<sup>35</sup> During occupations, Occupying Powers bear duties vis-à-vis the population ‘to the fullest extent of the means available to [them]’.<sup>36</sup> This is understood as requiring the Occupying Power to direct ‘all means available’ to the satisfaction of the essential needs of the population under its control, which must be assessed on a case-by-case basis. The ‘means available’ include the logistical and administrative capacities of the Occupying Power, including the development of plans aimed at facilitating the transport and distribution of essential supplies;<sup>37</sup> moreover, Occupying Powers must ensure and maintain, ‘with the cooperation of national and local authorities, the medical and hospital establishments and services, public health and hygiene in the occupied territory’,<sup>38</sup> particularly with respect to marginalized groups such as women, pregnant women or new mothers, and children.

15. Second, where the concrete effects of the armed conflict determine severe constraints on available resources, the State’s capacity to realise MH-SRH rights in full may be compromised. However, the State remains under an obligation to use the maximum of its available resources to guarantee, at a minimum, the core content of said rights.<sup>39</sup> IHL rules establish an essential level of care mirroring the content of minimum MH-SRH-related obligations under the ICESCR.<sup>40</sup> This applies *mutatis mutandis* in the context of military occupations, where Article 55 Fourth Geneva Convention establishes a ‘definite obligation to maintain the material conditions at a reasonable level for the population of the occupied territory’,<sup>41</sup> including supplies for SRH.<sup>42</sup> This includes maintaining operational medical facilities offering gynaecology and obstetrics services where non-operation could increase mortality among women and girls.<sup>43</sup>
16. Third, it might be that the armed conflict is so exceptionally impactful that the obligation to ensure even the minimum core of MH-SRH rights is jeopardised. This could be caused by impelling military necessities as well as financial recesses deriving therefrom. In these circumstances, the Committee established that ‘even where the available resources are demonstrably inadequate, the obligation remains for a State party to strive to ensure the widest possible enjoyment of the relevant rights’.<sup>44</sup> Accordingly, States must demonstrate ‘that every effort has been made to use all resources that are at [their] disposition in an effort to satisfy, as a matter of priority, those minimum obligations’.<sup>45</sup>
17. Consequently, a State Party is *not* responsible for the failure to meet at least its minimum core obligation for a lack of available resources, only when it can be assessed that it was *willing, yet unable* to comply with its obligations. Such unwillingness may be demonstrated, inter alia, in two circumstances.
18. Firstly, the State may be considered unwilling where it fails to seek external assistance in circumstances which manifestly exceed its response capacity to protect needs, as required by

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<sup>35</sup> GCIV Commentary, para 2043.

<sup>36</sup> GCIV Commentary, para 3445.

<sup>37</sup> GCIV Commentary, para 3454.

<sup>38</sup> GCIV, art 56(1).

<sup>39</sup> CESCR ‘Concluding Observations on the Initial Report of Pakistan’ (20 July 2017) UN Doc E/C.12/PAK/CO/1, para 15; CESCR ‘Concluding Observations on the Third Periodic Report of Serbia’ (6 April 2022) UN Doc E/C.12/SRB/CO/3 para 24(c); CESCR ‘Concluding Observations on the Seventh Periodic Report of Poland’ (24 October 2024) UN Doc E/C.12/POL/CO/7, para 18; Geneva Academy, ‘Reframing Military Expenditure as a Human Rights Issue: Normative Constraints under the ICESCR’ (Geneva Academy 2026), 11–14.

<sup>40</sup> See all IHL provisions quoted in previous footnotes.

<sup>41</sup> GCIV Commentary, paras 3446–3449.

<sup>42</sup> GCIV Commentary, para 3452. See also Médecins Sans Frontières, ‘Medical protocol for sexual violence care’ (2<sup>nd</sup> ed, 2022); WHO, *Clinical management of rape and intimate partner violence survivors. Developing protocols for use in humanitarian settings* (2020).

<sup>43</sup> GCIV Commentary, para 3486.

<sup>44</sup> GC No 3, para 11.

<sup>45</sup> GC No 14, para 47.

Article 2(1) ICESCR.<sup>46</sup> In this regard, the Committee asserted that, where a State invokes its incapacity to fulfil its obligation for reasons beyond its control, it bears the burden of proving that it has ‘unsuccessfully *sought* to obtain international support’.<sup>47</sup> This is consistent with the view that the obligation to take steps to the maximum of available resources includes a duty to seek international assistance where domestic conditions prevent the realisation of the right. To ‘seek’ such assistance entails a positive obligation to initiate processes with other States, the UN or other assisting entities.<sup>48</sup>

19. Secondly, the State may be proven unwilling when, upon offer of external assistance, it arbitrarily refuses it,<sup>49</sup> directly or through obstruction. The principle that the provision of external assistance requires the consent of the State is fundamental in international law, as recognized by the International Law Commission.<sup>50</sup> However, this should be read in harmony with other relevant rules of international law according to which consent cannot be arbitrarily withheld.<sup>51</sup> Furthermore, consent must be exercised in light of what is necessary and appropriate in the circumstances, and any limitations must be proportionate.<sup>52</sup> Moreover, while State discretion remains the pivotal element in determining the most appropriate form of assistance, it is limited by the principle of good faith and thus must be exercised in accordance with the State’s obligations under international agreements.<sup>53</sup>
20. Conclusively, States’ responsibility for failing to uphold ICESCR obligations related to MH-SRH in times of armed conflicts goes beyond cases of direct attacks against MH-SRH-related persons, goods and facilities, covering also situations in which States are unwilling to guarantee them against the effects of hostilities.

### **ICESCR States Parties’ responsibility for war crimes against MH-SRH**

21. Conducts amounting to violations of MH-SRH rights provided under the ICESCR may also qualify as war crimes, if there is a nexus with the armed conflict and the material and subjective elements of the given crime are met. While not every violation of the right to health, and specifically of MH-SRH rights, constitutes the underlying conduct of a war crime, certain war crimes materialize through conduct that impairs the enjoyment of said rights, engaging ICESCR States Parties’ responsibility to protect or prevent violations. This includes direct attacks against health facilities, supplies, personnel and transport; and also more subtle situations, in which States willingly fail to take steps to realize MH-SRH rights to the fullest extent of the means available to them. The following paragraphs illustrate these scenarios in turn.

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<sup>46</sup> On external assistance in times of armed conflicts see Institute of International Law, ‘Resolution on humanitarian assistance’ (Bruges Session 2003) art III, para 3; UNGA Res 46/182 (14 April 1992) UN Doc A/RES/46/182, Annex, para 5; International Federation of Red Cross and Red Crescent Societies, ‘Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance’ (2007) Guideline 3(2).

<sup>47</sup> CESCR ‘General Comment No 12: The Right to Adequate Food’ (12 May 1999) UN Doc E/C.12/1999/5, para 17, emphasis added.

<sup>48</sup> ILC, ‘Draft Articles on the Protection of Persons in the Event of Disasters, with commentaries’ (2016) UN Doc A/71/10, art 11(9).

<sup>49</sup> UNSC Res 2139 (2014) UN Doc S/RES/2139 (2014) 2; Institute of International Law, ‘Resolution on humanitarian assistance’ (Bruges Session 2003) art. VIII, para 1.

<sup>50</sup> ILC, ‘Draft Articles on the Protection of Persons in the Event of Disasters, with commentaries’ (2016) UN Doc A/71/10, 35.

<sup>51</sup> UNCHR ‘Guiding Principles on Internal Displacement’ (11 February 1998) UN Doc E/CN.4/1998/53/Add.2, principle 25(2); UN Office for the Coordination of Humanitarian Affairs, ‘Oxford Guidance on the Law Relating to Humanitarian Relief Operations in Situations of Armed Conflict’ (2016) paras 44-54; GCIV, art 59.

<sup>52</sup> UN Office for the Coordination of Humanitarian Affairs, ‘Oxford Guidance on the Law Relating to Humanitarian Relief Operations in Situations of Armed Conflict’ (2016) paras 44-54.

<sup>53</sup> Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, UNGA Res 2625 (XXV) (1971), Annex, Preamble.

### ***Attacks against hospitals and medical units***

22. Customary IHL prohibits intentionally directing attacks against hospitals and medical units and establishes them as serious IHL violations constituting war crimes.<sup>54</sup> Among innumerable other examples, the airstrike committed by Syrian (and Russian) armed forces against the maternity hospital in eastern Aleppo in 2017, the only facility providing specialized obstetric and neonatal care in the area, constitutes a paradigmatic instance of conduct falling within this prohibition. In the absence of evidence that the facility had lost its protected status, such an attack may satisfy the elements of the war crime of intentionally directing attacks against a protected medical unit.<sup>55</sup> The destruction of the hospital eliminated the only available provision of specialized maternal and neonatal care in the area. Syria, therefore, interfered with women's access to essential reproductive healthcare services,<sup>56</sup> undermining the availability of healthcare services that form part of the minimum core obligations associated with the right to health under Article 12 ICESCR.<sup>57</sup>

### ***Starvation of civilians through the deprivation of objects indispensable to survival***

23. Customary IHL prohibits the starvation of civilians as a method of warfare, including through the intentional deprivation of objects indispensable to their survival.<sup>58</sup> Starvation is a war crime both in international and non-international armed conflicts.<sup>59</sup> Starvation is understood as prohibiting parties to a conflict to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, drinking water installations and supplies, medicines, and other essential resources.<sup>60</sup>
24. Among other examples concerning MH-SRH, the severe restrictions imposed by Israel on Gaza on access to food, potable water, electricity, medical supplies and humanitarian relief following the crimes of 7 October 2023 have had particularly harmful consequences for pregnant women, new mothers and newborns.<sup>61</sup>
25. As the Occupying Power, Israel is required under Articles 55 and 56 Fourth Geneva Convention to ensure the provision of food, medical supplies and healthcare services to the civilian population to the fullest extent of its available means; and under Article 12 ICESCR, it must ensure that persons under its jurisdiction have access to essential food, safe drinking water, essential medicines and basic healthcare services as part of minimum core obligations arising under the right to health, including essential medicines and emergency obstetric supplies necessary to ensure safe pregnancy, childbirth and postnatal care.<sup>62</sup> Both IHL and the ICESCR establish that, when the population is inadequately supplied, the occupying State is under an obligation to agree to and facilitate external humanitarian assistance. An integrated interpretation of relevant IHL rules and Article 12 ICESCR reinforces the reading whereby, in the context of blockades to humanitarian aid, although the Occupying Power retains a role in authorizing and coordinating relief consignments, such authority must be exercised through a form of strategic consent directed at facilitating, and not frustrating, the delivery of assistance to civilians in need.<sup>63</sup>

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<sup>54</sup> CIHL, Rule 156. ICC Statute, art 8(2)(b)(ix)-(e)(iv).

<sup>55</sup> For a definition of medical units, CIHL, Rule 28.

<sup>56</sup> Amnesty International, 'Syria: Fatal airstrike on maternity hospital a potential war crime' (Press Release, 29 July 2016).

<sup>57</sup> GC No 14, paras 12, 43-45.

<sup>58</sup> CIHL, Rule 53.

<sup>59</sup> CIHL, Rule 53, fn 13. ICC Statute, art 8(2)(b)(xxv).

<sup>60</sup> CIHL, Rule 54. ICC, Elements of Crimes, art 8(2)(b)(xxv).

<sup>61</sup> Human Rights Watch, 'Five Babies in One Incubator: Violations of Pregnant Women's Rights Amid Israel's Assault on Gaza' (28 January 2025).

<sup>62</sup> GC No 3, para 10; GC No 14, para 43-44; GC No 22, para 49-50.

<sup>63</sup> UN Office for the Coordination of Humanitarian Affairs, 'Oxford Guidance on the Law Relating to Humanitarian Relief Operations in Situations of Armed Conflict' (2016) para 114; Marina Sharpe, 'Humanitarian Access to Gaza' (*EJIL:Talk!*, 20 November 2023).

26. In the case of Gaza, the deliberate deprivation of indispensable goods, also through arbitrary restrictions on humanitarian assistance, may satisfy the elements of the war crime of starvation. At the same time, severe restrictions imposed on humanitarian and medical relief entering Gaza affected not merely the progressive realization of the right to health under the Covenant but its minimum essential content, hence providing evidence of an unwillingness to ensure the provision of indispensable objects necessary for civilian survival, including medical supplies essential to maternal and reproductive healthcare.<sup>64</sup>

### ***Sexual violence and forced pregnancy***

27. Conflict-related sexual violence may constitute the underlying conduct of the war crime of forced pregnancy.<sup>65</sup> Forced pregnancy criminalizes conduct resulting in unlawfully placing the victim in a position in which she cannot choose whether to continue the pregnancy,<sup>66</sup> thus constituting a sustained interference with her sexual and reproductive autonomy.<sup>67</sup>
28. Such a denial of reproductive autonomy, inherent in the removal of the woman's choice on whether to continue the pregnancy,<sup>68</sup> also amounts to a violation of Article 12 ICESCR, which protects the right to make decisions concerning one's body free from violence and coercion.<sup>69</sup>
29. In the context of the armed conflict in Sudan in 2023-2024, there is evidence that women raped by members of the Rapid Support Forces (RSF) and allied militias were not able to seek medical support following rape as continued to be held in conditions of enslavement.<sup>70</sup> This indicates the commission of sexual violence capable of resulting in forced pregnancies connected to the hostilities.
30. The areas where the crimes occurred were placed under the control of armed groups at the time of the events. In 2026, however, Sudan regained control over those territories.<sup>71</sup> Although Sudan could not therefore prevent violations to occur, still obligations under the Covenant persist upon it in their procedural dimension now that control has been re-established.<sup>72</sup> Particularly, the Committee affirmed that States Parties must ensure that violations of the right to SRH committed by privates are investigated and prosecuted.<sup>73</sup> Accordingly, Sudan is required to ensure accountability for perpetrators and to provide effective redress to victims of sexual and reproductive violence, including forced pregnancy, committed in the context of the armed conflict.<sup>74</sup>

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<sup>64</sup> Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, “‘More than a human can bear’: Israel’s systematic use of sexual, reproductive and other forms of gender-based violence” (13 March 2025) UN Doc A/HRC/58/CRP.6, para 173.

<sup>65</sup> CIHL, Rules 93, 156.

<sup>66</sup> *Prosecutor v Dominic Ongwen* (Decision on the Confirmation of Charges) ICC-02/04-01/15 (23 March 2016) para 100.

<sup>67</sup> ICC, Elements of Crimes, art 8(2)(b)(xxii) (Forced pregnancy).

<sup>68</sup> *Prosecutor v Dominic Ongwen* (Decision on the Confirmation of Charges) ICC-02/04-01/15 (23 March 2016) para 99.

<sup>69</sup> GC No 22, para 49(d).

<sup>70</sup> Human Rights Watch, ‘Sudan: Fighters Rape Women and Girls, Hold Sex Slaves. Gang Rape, Sexual Slavery as Rapid Support Forces Attack Refugee Area’ (15 December 2024).

<sup>71</sup> Al Jazeera, ‘Three years of Sudan under fire’ (Al Jazeera) <https://interactive.aljazeera.com/aje/2026/sudan-under-fire/> accessed 11 June 2026.

<sup>72</sup> UN Human Rights Experts, ‘Joint Statement: Human Rights Responsibilities of Armed Non-State Actors’ (Press Release, 25 February 2021); August Reinisch, ‘The Changing International Legal Framework for Dealing with Non-State Actors’ in Philip Alston (ed), *Non-State Actors and Human Rights* (OUP 2005), p 79–81; *Velásquez Rodríguez v Honduras* (Merits) Inter-American Court of Human Rights Series C No 4 (29 July 1988) paras 172–174; CEDAW, ‘General Recommendation No 19: Violence against Women’ (1992) UN Doc A/47/38, para 9.

<sup>73</sup> GC No 22, para 64.

<sup>74</sup> GC No 14, paras 33, 35; GC No 22, paras 42–44.