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COLOMBIA DIVERSA

Derechos LGBT y el conflicto armado en Colombia

Reporte para el Experto Independiente sobre la protección contra la violencia y discriminación por motivos de orientación sexual e identidad de género.

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Reporte realizado por:
Asociación Internacional de Lesbianas, Gays, Bisexuales, Trans e Intersex (ILGA Mundo) y Colombia Diversa

Con el apoyo y colaboración del:

Centro de Derechos Reproductivos

Organizaciones

ILGA World. Asociación Internacional de Lesbianas, Gays, Bisexuales, Trans e Intersex.

ILGA World es una federación mundial de más de 1700 organizaciones en más de 160 países y territorios que hacen campaña por los derechos de las personas lesbianas, gays, bisexuales, trans e intersex. ILGA World tiene estatus consultivo ECOSOC de las Naciones Unidas y sus miembros se encuentran en seis regiones: ILGA Panafricana (África), ILGA Asia , ILGA-Europa, ILGALAC (América Latina y el Caribe), ILGA Norteamérica e ILGA Oceanía.

Colombia Diversa es una organización no gubernamental que desde 2004 lucha por los derechos de aquellas personas que han sido discriminadas por amar, ser o parecer "diferentes". Con el fin de vivir en una sociedad igualitaria para todas y todos, realizamos litigio estratégico, incidencia e investigación sobre derechos humanos de lesbianas, gays, bisexuales y personas trans en Colombia.

El **Centro de Derechos Reproductivos** es una organización internacional de defensa legal sin ánimo de lucro con sede en la ciudad de Nueva York, y con oficinas regionales en Nairobi, Bogotá, Ginebra y Washington, D.C.- utiliza la ley para promover la libertad reproductiva como un derecho humano fundamental que todos los gobiernos están legalmente obligados a respetar, proteger y cumplir. Desde su creación, hace 27 años, el Centro ha defendido la realización de los derechos humanos en una amplia gama de cuestiones, entre ellas el derecho a acceder a servicios de salud sexual y reproductiva libres de coacción, discriminación y violencia; el derecho a la autonomía corporal; la prevención y el tratamiento de la violencia sexual; y la erradicación de las prácticas tradicionales nocivas.

Este reporte ha sido preparado como respuesta al llamado a contribuciones publicado por el Experto Independiente sobre la protección contra la violencia y discriminación por motivos de orientación sexual e identidad de género. El documento se centra en las implicaciones de género y orientación sexual del conflicto armado en Colombia (la violencia sistémica, incluida la violencia sexual basada en OSIG y la violación de los derechos sexuales y reproductivos de las personas LGBT en el contexto del conflicto) y en la inclusión de las personas LGBT en las medidas del acuerdo de paz implementado en 2016. A su vez, este documento provee una serie de recomendaciones para impulsar el avance de las medidas del acuerdo enfocadas en OSIG y compila breves estadísticas y casos de la situación de las personas LGBT en el contexto del conflicto armado en Colombia.

Contenido

I. Breves antecedentes: El conflicto armado en Colombia y sus dimensiones en cuanto a OSIG.

Colombia es un país con alta diversidad en términos étnico-raciales, de género y de orientación sexual, entre otros lugares identitarios; diversidad que ha sido incluso reconocida en la Constitución de 1991.[1] No obstante, las personas LGBT han sufrido (y siguen sufriendo) múltiples formas de violencia que se fundan en la construcción y percepción de sus OSIEGCS (Orientación sexual, identidad de género, expresión de género y características sexuales) como "indeseables". En relación al conflicto armado reciente en el país ese desprecio ha sido incorporado en los repertorios de violencia desplegados por los actores armados, tanto en momentos de disputa territorial como durante el control social que han ejercido en los territorios.[2] En este sentido las violencias que sufren las personas LGBT implican, desde una mirada amplia, una multiplicidad de actores y factores como lo son los imaginarios y creencias popularizadas, la discriminación estructural y la violencia institucional. Estos factores estructurales se han engranado con las lógicas del conflicto armado, por ende, exacerbando sus efectos en las personas con diversas OSIEGCS. [3] Colombia, no solo ha sido el lugar de una guerra civil que duró más de 50 años; también, en los últimos 30 años, el país ha mantenido conflictos y un puñado de conversaciones de paz intermitentes con dos de sus grupos de guerrilla más influyentes, las Fuerzas Armadas Revolucionarias de Colombia - Ejército del Pueblo (FARC-EP) y el Ejército de Liberación Nacional (ELN) ambos formados en 1964.[4] En este contexto y dado que no es posible aislar las violencias estructurales que sufren las personas LGBT, de aquellas violencias que se producen en el marco del conflicto armado en el país, es preciso indagar por las condiciones de esta imbricación y sus consecuencias. [5]

II. Violencia sistemática contra personas LGBT en el conflicto armado: La violencia sexual basada en OSIG como instrumento de control.

De acuerdo con el Registro Único de Víctimas, a 31 de mayo de 2020 se habían identificado 3.974 personas LGBT víctimas del conflicto armado.[6] Estas cifras solo representan casos reportados e identificados hacia comunidades de orientación sexual e identidad de género diversa, y por ende, no abarcan la cifra total de casos no reportados.

Además de desapariciones y crímenes por prejuicio la violencia sexual es uno de los repertorios principales de violencia ejercidos contra las personas LGBT en el conflicto armado Colombiano. Tal es el caso de Patricia, una mujer lesbiana de 32 años que fue drogada y violada por tres integrantes de un grupo paramilitar del departamento de Bolívar y tiene un hijo producto de esta violación[7], o el caso de Lina, víctima de violencia sexual, quien se identifica como lesbiana y afrodescendiente y quien relata haber sido atacada no solo por su orientación sexual sino por el color de su piel. [8]

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[1] Centro Nacional de Memoria Histórica. *Aniquilar la Diferencia. Lesbianas, gays, bisexuales y transgeneristas en el marco del conflicto armado colombiano.* Bogotá, CNMH - UARIV - USAID -OIM, 2015. P. 21

[2] Centro Nacional de Memoria Histórica (2019), Ser marica en medio del conflicto armado. Memorias de sectores lgbt en el Magdalena Medio, cnmh, Bogotá. P. 13

[3] Centro Nacional de Memoria Histórica. (2015) Ibid. P. 265

[4] Nicole Maier (2020) Queering Colombia's peace process: a case study of LGBTI inclusion, The International Journal of Human Rights, 24:4, 377-392, DOI: 10.1080/13642987.2019.1619551. P. 377

[5] Centro Nacional de Memoria Histórica. (2015) Ibid. P. 70

[6] Colombia Diversa (2020) Los órdenes del prejucio. Los crímenes cometidos sistemáticamente contra personas LGBT en el conflicto armado. P. 24

[7] Centro Nacional de Memoria Histórica. (2015) Ibid. P. 80

[8] Centro Nacional de Memoria Histórica. (2015) Ibid. P. 171

Colombia diversa ha comenzado a construir una base de datos de episodios de violencia motivada por orientación sexual durante el conflicto armado, logrando registrar 139 episodios, incluyendo entre ellos 38 sobre violencia sexual. De estos eventos, 8 fueron perpetrados por las Autodefensas Unidas de Colombia (AUC), un grupo paramilitar de extrema derecha; 6 por grupos sucesores de los paramilitares que surgieron tras la desmovilización parcial de las AUC en el Proceso de Justicia y Paz; 3 por grupos paramilitares no identificados; 13 por las FARC-EP; 3 por las Fuerzas Armadas; 3 por la Policía Nacional; y 3 por actores no identificados. Estas cifras demuestran que la violencia sexual ha sido perpetrada por todos los actores de la guerra, atentando contra los derechos humanos de las personas LGBT, únicamente por prejuicios homofóbicos y transfóbicos. Particularmente, las mujeres LBT han sido las víctimas de la violencia sexual ejercida como práctica de guerra. Por ejemplo, Colombia diversa ha recabado evidencia de que la guerrilla de las FARC-EP, utilizó la violencia sexual como una forma de "corregir" aquellas sexualidades consideradas inapropiadas o incongruentes con las normas morales establecidas por el grupo para las comunidades o territorios que pretendían gobernar.[9]

Este discurso "correctivo" también está presente en los relatos de las víctimas que se identifican como hombres trans o transmasculinos, por ejemplo, el caso de Víctor Manuel, quien sufrió violencia sexual por un miembro de la guerrilla de las FARC en el Pacífico nariñense: "Por mi condición de chico trans, he recibido insultos de parte de paramilitares, de guerrilleros, de hecho fui víctima de violencia sexual, producto de esta violación tengo un niño. En el momento que duró, durante el momento de la violación siempre me estaban diciendo que yo no era un hombre, que a mí me podían hacer lo que le hacían a cualquier mujer, que el hombre tenía pene y que dónde estaba mi pene (…)"[10]

Asimismo, la violencia sexual también operó como una muestra del poder del guerrillero sobre personas y cuerpos con expresión de género percibidos como femeninos, como las mujeres transgénero o los hombres homosexuales. Esto ocurrió con un grupo de mujeres trans y adolescentes homosexuales, que fueron blanco de los miembros de las FARC-EP debido a su expresión de género visiblemente femenina. Estos combatientes les condujeron a un lugar oscuro y remoto donde fueron obligades a actuar en un concurso de belleza para el grupo armado, que posteriormente les sometió a los más atroces y aborrecibles actos de violencia sexual colectiva en Tumaco, Nariño.[11]

Es necesario también hacer hincapié en el elemento de impunidad que permea los actos de violencia sexual durante el conflicto armado. Por ejemplo el Estado no lleva estadísticas oficiales o centralizadas sobre la prevalencia de estos delitos. Del mismo modo, el compromiso institucional para prevenir, atender, procesar y reparar a les sobrevivientes de violencia sexual relacionada con el conflicto es escaso y revela la falta de voluntad política del Estado colombiano para defender los derechos de las personas LGBT, particularmente las mujeres LBT.

III. Contexto de derechos sexuales y reproductivos de las personas LGBT durante el conflicto armado

Las mujeres, las niñas y las personas de diversas OSIEGCS son especialmente vulnerables a sufrir discriminación, actos de violencia, represalias y persecución, incluida la violencia sexual y las

[9] Colombia diversa (2020) Answers to questionnaire for the thematic report on rape as a grave and systematic human rights violation and gender-based violence against women. Report sent to the Special Rapporteur on violence against women, its causes and consequences.
[10] Centro Nacional de Memoria Histórica. (2015) Ibid. P. 258
[11] Colombia diversa (2020). Report sent to the Special Rapporteur on violence against women, its causes and consequences.

violaciones de sus derechos sexuales y reproductivos. Su identidad interseccional, que incluye su cultura, sexo, género, etnia, situación socioeconómica e idiomas, entre otros, les sitúa en el centro de la discriminación sistémica e interseccional.[12] Esta situación es producto y se ve agravada por el colonialismo, la discriminación y el racismo históricos, estructurales y duraderos que se encuentran en la sociedad y en sus leyes, políticas e instituciones.[13]

El Centro de Derechos Reproductivos encontró que grupos armados, particularmente grupos paramilitares y las guerrillas Ejército de Liberación Nacional (ELN), Ejército Revolucionario Guevarista (ERG) y FARC-EP (Fuerzas Armadas Revolucionarias Colombianas – Ejército Popular), así como miembros de la Fuerza Pública han ejercido violencias reproductivas sobre niñas, jóvenes y mujeres, siendo particularmente preocupante la situación vivida por niñas afrocolombianas, indígenas y campesinas, niñas y jóvenes reclutadas por los grupos armados, mujeres lesbianas, hombres trans y mujeres en situación de prostitución. En el marco del conflicto armado, las modalidades de violencias reproductivas que se han ejercido son: la anticoncepción forzada, esterilización forzada, embarazos por violación, maternidades forzadas o coaccionadas, abortos forzados y violencias dirigidas a la capacidad reproductiva. Adicionalmente, se identificó una forma de violencia institucional por denegación de la interrupción voluntaria del embarazo y violaciones a derechos reproductivos derivadas de prácticas como las fumigaciones con glifosato. Estas violencias se han ejercido con fines específicos: para generar terror, para controlar y dominar la capacidad reproductiva de las mujeres, para usar el cuerpo de las niñas y adolescentes para la guerra, y para dominar y controlar las poblaciones.[14]

Por otra parte, y en línea con la información proveída en la sección anterior, las mujeres lesbianas y hombres trans han tenido embarazos luego de violación por prejuicio excluyente, mal llamadas violaciones “correctivas”. Esto ha significado una forma de disciplinamiento corporal particular que tiene consecuencias a largo plazo en la vida de las víctimas. En el caso de las mujeres lesbianas la maternidad coaccionada puede estar atravesada por estereotipos de género que ponen en cuestión su capacidad de ejercer la maternidad por su orientación sexual. Para el caso de los hombres trans, el embarazo puede suponer una disputa con la transformación corporal que es importante en su proceso de construcción identitaria. Esta situación, en un contexto patriarcal y conservador, se convierte en sí mismo en una oportunidad para el ejercicio de violencias ejercidas por la sociedad y la comunidad. [15]

Es importante destacar que diversos mecanismos internacionales se han pronunciado en el tema de derechos sexuales y reproductivos de las personas LGBTI. Ejemplo de esto son las recomendaciones del Comité de los Derechos del Niño, que en su Observación General 20, ha pedido a los Estados que tomen medidas particulares "para superar las barreras del estigma y el miedo que experimentan, por ejemplo, las adolescentes, las niñas con discapacidades y las adolescentes lesbianas, gays, bisexuales, transexuales e intersexuales, para acceder a servicios de salud sexual y reproductiva[16]. No obstante es imprescindible indagar más a fondo los casos y las consecuencias en cuanto a derecho internacional de la violencia sexual ejercida a personas LGBTI en contextos humanitarios y de conflicto, incluyendo las particulares circunstancias del conflicto armado en Colombia. El acceso a los servicios de salud

[12] Inter-American Commission on Human Rights. *Indigenous Women*. OEA/Ser.L/V/II. Doc. 44/17. 2017. para 39, available at: http://www.oas.org/en/iachr/reports/pdfs/IndigenousWomen.pdf; See also: Inter-American Commission on Human Rights *Indigenous Women – Brochure* (2017), p. 1 https://www.oas.org/es/cidh/indigenas/docs/pdf/Brochure-MujeresIndigenas.pdf

[13] Inter-American Commission on Human Rights. *Indigenous Women*. OEA/Ser.L/V/II. Doc. 44/17. 2017. Paras 9, 10, 42, available at: http://www.oas.org/en/iachr/reports/pdfs/IndigenousWomen.pdf

[14] Centro de derechos reproductivos 2020. Una radiografía sobre la violencia reproductiva. P. 5

[15] Centro de derechos reproductivos 2020. Una radiografía sobre la violencia reproductiva. P. 25

[16] CRC Committee General Comment No. 20,para 60

sexual y reproductiva debe reforzarse para los supervivientes de la violencia sexual y reproductiva y debe ampliarse para incluir también las necesidades de salud sexual y reproductiva de todos los individuos, incluidas las personas de diversas orientaciones sexuales, identidades y expresiones de género y características sexuales.

Para más información sobre el marco legal internacional en derechos sexuales y reproductivos de las personas LGBTI en contextos humanitarios y de conflicto véase el **Anexo 1** de este documento.

IV. Iniciativas de Justicia Transicional y procesos de paz: Inclusión de las personas LGBT

En agosto de 2016, el gobierno de Colombia anunció que había alcanzado un acuerdo con el mayor grupo guerrillero del país, las Fuerzas Armadas Revolucionarias de Colombia (FARC)[17]. Este acuerdo de paz fue histórico en el conflicto armado de más de medio siglo en Colombia.; sin embargo, los votantes colombianos lo rechazaron. Una versión revisada fue finalmente aprobada en una votación en el Congreso. A pesar de las intensas críticas internas a las conversaciones de paz, éstas han sido elogiadas internacionalmente y veneradas como un modelo para el mundo, sobre todo en lo que respecta a sus esfuerzos en torno a las víctimas del conflicto armado.[18]

Colombia se enfrenta ahora al reto de implementar el acuerdo y crear una paz duradera. No obstante, el ciclo de confrontación y negociación de Colombia ha provocado al menos 220.000 muertos y casi seis millones de desplazados en las últimas cinco décadas. Este asombroso número de víctimas resulta aún más abrumador si se tiene en cuenta el número de familiares afectados por la pérdida de sus seres queridos y el número de comunidades aterrorizadas por los grupos guerrilleros y paramilitares, junto con y otras bandas criminales.[19] Esto ha sido doblemente devastador para las personas LGBT en Colombia. Dentro de este acuerdo de paz hay más de 100 medidas con enfoque de género[20], de las cuales 39 fueron identificadas como incluyentes de la población LGBT por Colombia Diversa. No obstante, el Plan Marco de Implementación sólo monitorea 51 indicadores en el capítulo de género. Esta reducción excluyó muchas de las medidas diferenciadas para personas LGBT. De hecho, el balance sobre los esfuerzos estatales para implementar las 39 medidas identificadas en el acuerdo de paz para las personas LGBT resulta desalentador[21]. Más del 80% de las medidas para las personas LGBT en el acuerdo de paz no han sido implementadas satisfactoriamente, especialmente debido a la falta de voluntad del gobierno para entender la sistematicidad de las consecuencias e impacto a las personas LGBT en el conflicto armado y concluir que la discriminación por orientación sexual e identidad de género también estuvo en el corazón de la guerra.

Por ejemplo, en el punto 1 sobre reforma rural integral, no se contemplaron medidas para el acceso a la tierra de las personas LGBT, ni siquiera de las mujeres lesbianas dentro de las medidas adoptadas para mujeres. Y tampoco los Planes Nacionales sectoriales, encargados del acceso a derechos básicos como salud, trabajo, alimentación o vivienda, están cumpliendo con implementar estrategias específicas para las personas LGBT. Lo que resulta especialmente grave en un contexto que excluye de todas las oportunidades a las personas con diversidad de OSIEGCS.

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[17] Véase Acuerdo final para la terminación del conflicto y la construcción de una paz estable y duradera (2016). Para más información consultar la página de la Jurisdicción Especial para la Paz (JEP)

[18] Nicole Maier (2020) Ibid. P. 378

[19] Nicole Maier (2020 Ibid. P. 378

[20] Véase ONU mujeres (2018) 100 medidas que incorporan la perspectiva de género en el acuerdo de paz entre el gobierno de colombia y las farc-ep para terminar el conflicto y construir una paz estable y duradera.

[21] Consultar el siguiente enlace para ver el resumen de los avances de las medidas para personas LGBT del acuerdo de paz.

De mismo modo, los puntos 2 y 3 del acuerdo están ligados. El punto 3 (fin del conflicto) busca brindar garantías de seguridad a líderes sociales y defensores de derechos humanos, lo que es necesario para permitir la participación política que promueve el punto 2. Al respecto, se encontró que las cifras de violencia contra personas LGBT se duplicaron en 2020 y que no hay garantías para que las líderes LGBT participen, puesto que han recibido numerosos ataques en el ejercicio de su labor. Paralelamente, Colombia Diversa ha evidenciado que no se están implementando las medidas destinadas a erradicar los estereotipos e imaginarios negativos sobre las personas LGBT. Además, el programa de sustitución de cultivos PNIS que plantea el punto 4 (Drogas Ilícitas) no tiene medidas para personas LGBT y se formuló desde un enfoque de género binario.

Por último, sobre el punto 5 referente a las víctimas es importante precisar que los parámetros conceptuales, interpretativos y metodológicos de la Jurisdicción Especial para la Paz (JEP)[22] y la Comisión de la Verdad (CEV) no resultan suficientes para dar cuenta del papel que el género y la sexualidad tuvieron en la guerra y reflexionar sobre la no repetición de las violencias por prejuicio. Por ejemplo, la caracterización de patrones de violencia contra personas LGBT NO comprende el efecto ejemplarizante (y por tanto expansivo) que tiene cada crimen por prejuicio frente a otras personas LGBT que habitan los territorios, produciendo su silenciamiento, ocultamiento e incluso desplazamiento. A su vez, la JEP carece de una metodología de investigación o contrastación sobre la persecución de las personas LGBT en el marco del conflicto armado, mediante la cual se identifiquen y analicen los impactos del prejuicio contra las identidades de género y orientaciones sexuales "no normativas". Es importante resaltar aquí el trabajo de la Unidad de Búsqueda de Personas Desaparecidas (UBPD) que creó en asocio con los liderazgos sociales la acción afirmativa Grupo de Expertas LGBT. Estas son personas LGBT que se dedican a impulsar la búsqueda humanitaria de las personas con OSIG diversa desaparecidas.

En tal sentido, la actual transversalización del enfoque de género es insuficiente porque no permite que mediante los casos acreditados de manera independiente se evidencie la magnitud, sistematicidad e impacto de las violencias que afectaron el derecho al ejercicio autónomo y libre de la sexualidad en el marco del conflicto armado. En consecuencia, dado el alto riesgo de invisibilidad e impunidad sobre estas violencias, Colombia Diversa y varias organizaciones feministas han insistido a la jurisdicción la apertura de un Caso Nacional de violencia sexual, reproductiva y otras violencias motivadas en la sexualidad de las víctimas.

A pesar de todo lo anterior, el mandato innovador sobre la satisfacción de los derechos de las personas LGBT que el acuerdo otorgó a las Instituciones del Sistema Integral ha dado lugar a preguntas relevantes para avanzar en la comprensión de la importancia de las consecuencias del conflicto para las personas LGBT en todos los sectores de la sociedad colombiana. En este sentido, a pesar de las dificultades ya enunciadas, se ha incentivado un aprendizaje institucional sin precedentes sobre las realidades, necesidades y estrategias para las personas LGBT.

[22] El Acuerdo estableció que la ley determinaría los criterios a partir de los cuales la JEP podría priorizar y seleccionar casos para su investigación a profundidad. Esto con el fin de enjuiciar a los responsables de cometer conductas constitutivas de patrones criminales que dieran cuenta de las dinámicas generales de violencia contra la población civil durante el conflicto armado. En ese sentido, el artículo 19 de la ley Estatutaria de la JEP estableció como criterios de selección de casos la gravedad, la representatividad, las características diferenciales de las víctimas, la representatividad de los responsables y la disponibilidad probatoria. En el caso de la gravedad, la selección de casos debe hacerse consultando el "grado de afectación de derechos fundamentales individuales y colectivos; modalidad de la comisión de los hechos en términos de violencia *y sistematicidad*" (Consultar Colombia Diversa (2020) Los órdenes del prejucio, Ibid , p. 25)

V. Recomendaciones

1. Es necesario que el Experto Independiente para OSIG monitoree la situación de implementación del Acuerdo de Paz para personas LGBT en Colombia, dado su carácter histórico y determinante para experiencias futuras.
2. Es necesario que el Estado se comprometa políticamente con la necesidad de implementar las medidas con enfoque LGBT del Acuerdo de Paz. Especialmente aquellas que buscan superar las barreras materiales de las personas LGBT para vivir sin violencia y con bienestar general.
3. Es necesario que los organismos internacionales, incluido el Experto Independiente para OSIG, acompañen con recomendaciones las labores de la JEP en la búsqueda de una metodología para investigar la violencia por prejuicio contra las personas LGBT. Esto es especialmente cierto para el caso 007 de la JEP que abrió una línea de investigación sobre crímenes contra menores de edad LGBT reclutados forzosamente[23]. Este apoyo también debe incluir la labor de búsqueda humanitaria de la UBPD y el Grupo de Expertas LGBT.

[23] Para más información consultar el comunicado 009 de la JEP

VI. Anexo 1.

El presente anexo introduce el marco legal sobre derechos sexuales y reproductivos de las personas LGBT en contextos humanitarios y de conflicto. Dicho marco legal ha sido preparado por el Centro de Derechos Reproductivos como complemento a este reporte. Se ha decidido mantener el documento en el idioma original (Inglés).

Submission from the Center for Reproductive Rights following the call for submission of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity on the dynamics between sexual orientation, gender identity, and armed conflict.

I. Background

Women, girls and persons of diverse sexual orientations, gender identities and expressions and sex characteristics are particularly vulnerable to suffer from discrimination, acts of violence, retaliation and persecution, including sexual violence and violations of their SRHR. Their intersectional identity, including their culture, sex, gender, ethnicity, socio-economic situation, and languages, among others, places them at the center of systemic and intersectional discrimination.[i] This situation is the product of, and compounded by the historical, structural and enduring colonialism, discrimination and racism found in society and in its laws, policies and institutions.[ii]

In addition, sexual and gender-based violence in humanitarian settings is rampant and implicates a range of SRH consequences. These consequences disproportionately affect women, girls, and persons of diverse sexual orientations, gender identities and expressions, and sex characteristics (SOGIESC); they are also shaped by other factors, such as age, disability, legal status, race, and religion.

The breakdown of state infrastructure exacerbates pre-existing systemic inequalities and patterns of discrimination that negatively affect women, girls, and people of diverse SOGIESC. In humanitarian settings, as in other contexts, persons can face intersecting forms of discrimination (including due to their legal status or disability), and women and girls, for example, are at an increased risk of being subject to stigma, discrimination, SGBV, exploitation, and forced marriage.[iii] Ensuring the provision of SRH information and services in these settings is central not only to an effective humanitarian response but also to the fulfillment of international legal obligations.[iv]

The impact of the current COVID-19 pandemic is amplified for those living in existing and emerging humanitarian crises and for those affected by conflict. Poor conditions are worsening—including a rise in insecurity, instability and conflict, deterioration in displacement sites, and resource constraints—all of which will exacerbate the existing multiple and intersecting forms of discrimination experienced by women, girls, and people of diverse SOGIESC.

Alarmingly, some governments have been exploiting the global public health crisis to further hinder access to existing SRH information and services in humanitarian settings.[v]

II. International Legal framework

States have clear legal obligations under current human standards to ensure the respect, protection and fulfillment of SRHR of all persons with no discrimination. These obligations require States to guarantee that all individuals not only have access to comprehensive sexual and reproductive health information and services, bus also that they experience positive reproductive health outcomes, including lower rates of maternal mortality, and have the opportunity to make fully informed decisions about their sexuality and reproductive lives.[vi]

1) <u>Equality and non-discrimination</u>

Most of the Treaty Bodies have recognized that gender equality is essential to the realization of human rights.[vii] Nevertheless, traditional models have failed to address the historical roots of gender discrimination, gender stereotypes and traditional understandings of gender roles that perpetuate gender and inequality.[viii] In its General Comment No. 22, the Committee on Economic, Social and Cultural Rights (ESCR Committee) identified "*groups as, but not limited to, poor women, persons with disabilities, migrants, indigenous or other ethnic minorities, adolescent, lesbian, gay bisexual, transgender and intersex persons, and people living with HIV/AIDS*''[as] more likely to experience multiple discrimination.[ix] In the same line, in its General Recommendation No. 28 the Committee on the Elimination of all Forms of Discrimination Against Women (CEDAW Committee) stated that "*Certain groups of women, including women deprived of their liberty, refugees, asylum-seeking and migrant women, stateless women, lesbian women, disabled women, women victims of trafficking, widows and elderly women, are particularly vulnerable to discrimination through civil and penal laws, regulations and customary law and practices.*"[x] The Committee recommended that "*States parties should eliminate all forms of discrimination against disadvantaged and marginalized groups or rural women", including indigenous women and ensure that they "are protected from intersecting forms of discrimination and have access to [...] health care*".[xi]

The principle of substantive equality seeks to remedy entrenched discrimination by requiring States to take positive measures to address the inequalities that women face, for which States should:

- Address discriminatory power structures.[xii]
- Recognize that women and men experience different kinds of rights violations due to discriminatory social and cultural norms, including in the context of health,[xiii] and that, women may also face multiple discrimination, based on multiple grounds, including race, disability, age or other marginalized statuses.[xiv]
- Ensure equality of results.[xv]

The Committee on the rights of the Child (CRC Committee), the CEDAW, the ESCR Committee, the Committee on the Rights of Persons with Disabilities (CRPD Committee) and the Human Rights Committee have urged States to address both *de jure* and *de facto* discrimination in private and public spheres, adopt measures to eliminate gender stereotypes, and address practices that disproportionately impact women.[xvi] This translates by the fact that States should take positive measures to create an enabling environment that improves social conditions, including poverty and unemployment, factors that have an impact on women's right to equality in healthcare.[xvii]

Treaty monitoring bodies have repeatedly condemned laws that prohibit health services that only women need. The CEDAW Committee has stated that "*it is discriminatory for a State party to refuse to provide legally for the performance of certain reproductive health services for women*."[xviii] Furthermore, the ESCR Committee has made clear that equality in the context of the right to health "*requires at a minimum the removal of legal and other obstacles that prevent men and women from accessing and benefitting from healthcare on a basis of equality*."[xix]

International human rights bodies have also addressed multiple and intersectional forms of discrimination in individual complaints and in general comments/recommendations.[xx] Treaty monitoring bodies have specifically recognized that intersectional discrimination can hinder access to reproductive health services and the full realization of sexual and reproductive rights. Treaty monitoring bodies have thus recommended that states put a particular focus on the maternal health needs of marginalized groups of women, including adolescents, poor women, minority women, rural women, and women with disabilities.[xxi]

The ESCR Committee, in its General Comment 22 on the right to sexual and reproductive health, has expressly articulated state obligations to address intersectional forms of discrimination in access to sexual and reproductive services, including women and girls living in conflict situations.[xxii]

The Committee on the Rights of the Child, recognizes that girls are particularly vulnerable to discrimination because of the unequal access to sexual and reproductive health services.[xxiii] In its General Comment 20, noting the consequences of lack of access to SRH services *"contributes to adolescent girls being the group most at risk of dying or suffering serious or lifelong injuries in pregnancy and childbirth*."[xxiv] It recommends that *"[t]here should be no barriers to commodities, information and counselling on sexual and reproductive health and rights*. "[xxv] It has called on states to take particular measures '*to overcome barriers of stigma and fear experienced by, for example, adolescent girls, girls with disabilities and lesbian, gay, bisexual, transgender and intersex adolescents, in gaining access to such services*.'[xxvi]

2) <u>International human rights standards on sexual and reproductive rights in humanitarian settings</u>

States have the duty to respect, protect and fulfill sexual and reproductive rights during humanitarian crises.[xxvii] The pandemic has exacerbated pre-existing patterns of discrimination and violence in humanitarian settings. In addition, it threatens to push fragile settings into new crises with already strained health systems and logistics networks, inadequate and overcrowded spaces and shelters, limited protections from gender-based violence and insufficient hygiene and sanitation facilities and supplies.

The Inter-Agency Working Group on Reproductive Health in Crises urged a rights-based approach to the incorporation of women and girls' access to essential and rights-fulfilling sexual and reproductive health information and services during the COVID-19 response.[xxviii] The Working Group has developed a detailed set of policy recommendations on how this should be done.[xxix]

The CEDAW Committee indicated that states "*must adopt a rights-based approach and undertake a gender-conflict analysis to protect women and girls in humanitarian settings and conflict situations*" and that *"[t]hey must take remedial measures to reduce the risk of COVID-19 and counter disruptions of services to prevent avoidable maternal and child morbidity and mortality in humanitarian settings*".[xxx]

While there continues to be a need for more reliable data on maternal mortality in conflict and displacement settings, there is little doubt that conflict exacerbates maternal mortality.[xxxi]

In 2015, a United Nations (UN) inter-agency report found that in countries designated as fragile states, which include conflict-affected settings, the estimated lifetime risk of maternal mortality is 1 in 54, as compared to 1 in 180 global lifetime risk.[xxxii]

Moreover, maternal mortality ratios (MMRs) in countries affected by conflict remain high and have been shown to increase during periods of conflict. The Central African Republic has an MMR of 882

per 100,000 live births, which reflects improvement over the past 15 years but a slight increase since the start of the most recent period of unrest in 2013.[xxxiii] Similarly, Syria's MMR has increased from 49 to 68 per 100,000 live births since the start of the conflict in 2011.[xxxiv]

Studies have found that MMRs among refugees receiving humanitarian aid tend to be lower than among the host population or country of origin, but that delays in seeking and receiving care are among the most significant factors in maternal deaths[xxxv] – factors that are likely exacerbated for asylum seekers in transit.[xxxvi] A recent study conducted among Syrian refugee women in Lebanon found that many women experienced or perceived challenges in accessing reproductive health services, primarily due to costs, distance or transport to facilities, or fear of mistreatment, with more than 35% reporting problems during pregnancy or complications during labor, delivery, or abortion.[xxxvii]

International human rights bodies, including the CEDAW, CRC, and Human Rights Committees, have affirmed that fundamental human rights obligations, including economic, social, and cultural rights, continue to apply in humanitarian settings, including during armed conflict. Although international human rights law permits states to derogate from certain civil and political rights in some humanitarian settings and to limit certain obligations with respect to economic, social, and cultural rights depending on resource availability,[xxxviii] human rights treaty bodies have emphasized that such derogations are subject to strict conditions and that certain minimum core obligations, such as the right to be free from TCIDT, are non-derogable.[xxxix] Even where derogations are permitted, the measures taken cannot involve discrimination based solely on prohibited grounds, including sex.[xl]

With the prevalence of sexual violence in humanitarian settings, human rights bodies increasingly have provided recommendations regarding gender-based violence, explaining that the right to be free from gender-based violence still applies in humanitarian settings. In its General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, the CEDAW Committee urges states to prevent, investigate, and punish all forms of gender-based violence and to ensure survivors' access to justice, comprehensive medical treatment, and psychosocial support.[xli] The Committee also specifically calls on states to safeguard refugees and internally displaced persons (IDPs) from child, early, and forced marriage, to provide them with immediate access to medical services, and to create accountability mechanisms for gender-based violence in all displacement settings.[xlii]

Moreover, within the context of humanitarian settings, human rights bodies hold that the right to equality and non-discrimination applies.[xliii] In its General Recommendation No. 28, the CEDAW Committee affirmed that, even during disasters and public emergencies, women's rights are not suspended, and states must continue to respect, protect, and fulfill women's right to equality, which includes their reproductive rights.[xliv] The CEDAW Committee has found that "[*p]rotecting women's human rights at all times, advancing substantive gender equality before, during, and after conflict, and ensuring that women's diverse experiences are fully integrated into all . . . reconstruction processes are important objectives of the Convention.*"[xlv] The CEDAW Committee has noted that, instead of suspending rights protections, states should "adopt strategies and take measures addressed to the particular needs of women in . . . states of emergency."[xlvi]

Treaty Monitoring Bodies have also reiterated that international humanitarian law and international human rights law are complementary and mutually reinforcing.[xlvii]

The 2020 report of the UN Mission in South Sudan and the Office of the High Commissioner for Human Rights report, Access to Health for Survivors of Conflict-Related Sexual Violence in South Sudan, found that there was on average one health facility per 10,000 people in South Sudan, and many did not have enough qualified personnel to treat the survivors of sexual violence[xlviii]. The report recommended that the government substantially increasing funding for the public health sector, strengthening the

capabilities of facilities and health workers, and improving access to sexual and reproductive care[xlix].The report, which covered human rights as a component of a peace mission, was ground-breaking as it went beyond a focus on criminal accountability for perpetrators and covered the steps needed to comprehensively and sustainably deliver quality sexual and reproductive health services, as a step towards ensuring accountability for survivors of sexual violence, and could be a model for other situations[l].

In 2019 the Independent International Fact-Finding Mission on Myanmar documented sexual and gender-based violence against a backdrop of wide-ranging gender inequality and denial of reproductive health care.[li] In Venezuela, OHCHR reported on limited access to sexual and reproductive health goods and services, with zero contraceptives available in several cities, alongside severe restrictions on abortion, with an estimated 1 in 5 maternal deaths linked to unsafe abortions[lii].

Recognition in these reports on the importance of the provision of sexual and reproductive health goods and services in humanitarian settings, emphasizes that States are accountable for fulfilling their obligations for ensuring access to sexual and reproductive health services in different humanitarian contexts.

Treaty Bodies have also called on States to ensure positive reproductive health outcomes, in addition to ensure access to reproductive health services.[liii] They are also recognizing the interlinkages between the realization of a range of human rights and of women's reproductive health, often called social and other determinants of health,[liv] which refer to the conditions in which people are born, grow, live, work and age, which are shaped by power structures and resource distribution at the local, national and global levels.[lv] These determinants impact the choices and meaningful agency that individuals can exercise with respect to their sexual and reproductive health.[lvi] These determinants impact the choices and meaningful agency that individuals can exercise with respect to their sexual and reproductive health.[lvii]

In this context, marginalized populations have long experienced the disproportionate impact of restricted access to comprehensive reproductive health care and the COVID-19 has exacerbated the existing inequities.[lviii]

3) International humanitarian law (IHL) and sexual and reproductive rights

IHL is applicable only in times of armed conflict, including both international armed conflict and non-international armed conflict. IHL binds all parties to an armed conflict, including non-state armed

groups.[24] IHL allows for no derogation or reservation.[25] In addition, many, but not all, of the customary international law rules, including those rules related to fundamental guarantees, apply to both international armed conflict (IAC) and non-international armed conflict (NIAC) and hence, non-state armed groups.[26]

While IHL prohibits non-discriminatory treatment on the grounds of sex and "any other distinction founded on similar criteria," the protection of persons of diverse SOGIESC is not expressly mentioned or generally recognized under IHL.

IHL grants women the same protection as men, regardless if they are combatants, fighters, civilians or hors de combat. Recognizing their specific needs and vulnerabilities they face in conflict, however, IHL affords women additional specific protections and rights.[27] IHL contains important standards with regard to obligations regarding treatment of women civilians. medical treatment as well as the treatment of civilian women, and particularly pregnant women.

Customary IHL Rule 134 related to non-international armed conflict (NIAC), for example, refers to specific aspects of this rule that would apply to women and girls, such as ' by requiring 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' (see also section below on sexual violence). [28]

Rule 134 also requires that the specific protection, health and assistance needs of women affected by armed conflict must be respected and references IHRL standards to support this.[29] The ICRC has interpreted this norm as encompassing "medical, psychological and social assistance", including trauma treatment and counselling.[30] The breadth of this responsibility is also recognised in the ICRC Commentary (2016), which notes 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,

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[24] '… Under Article 3 common to the Geneva Conventions of 12 August 1949, non-international armed conflicts are armed conflicts in which one or more non-State armed groups are involved. Depending on the situation, hostilities may occur between governmental armed forces and non-State armed groups or between such groups only. … Non-governmental groups involved in the conflict must be considered as "parties to the conflict", meaning that they possess organized armed forces. This means for example that these forces have to be under a certain command structure and have the capacity to sustain military operations. Additional Protocol II to the Geneva Convention of 12 August 1949 develops and supplements common Article 3 without modifying its existing conditions of application, by introducing a requirement of territorial control. It provides that non-governmental parties must exercise such territorial control "as to enable them to carry out sustained and concerted military operations and to implement this Protocol". Additional Protocol II expressly applies only to armed conflicts between State armed forces and dissident armed forces or other organised armed groups. Contrary to common Article 3, the Protocol does not apply to armed conflicts occurring only between non-State armed groups.' from ICRC Case Book : https://casebook.icrc.org/glossary/non-international-armed-conflict
See also, (1) Customary IHL Rules, Chapter 32 (page 299); (2) *Prosecutor v Sam Hinga Norman* (Case No. SCSL-2004-14-AR72(E)) Decision on Preliminary Motion Based on Lack of Jurisdiction (Child Recruitment), Decision of 31 May 2004, at para 22, in which the Appeals Chamber of the Sierra Leone Special Court held that: *"it is well settled that all parties to an armed conflict, whether states or non-state actors, are bound by international humanitarian law, even though only states may become parties to international treaties."* https://sierralii.org/sl/judgment/special-court/2004/18; (3) Updated European Union Guidelines on promoting compliance with international humanitarian law (IHL) (2009/C/303/06) 15 December 2009. https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52009XG1215(01)&from=EN

[25] ICRC, Customary International Law Database, Introduction to Fundamental Guarantees, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_intofugu

[26] See Rules 87-105, Rules on Fundamental Guarantees https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter32

[27] ICRC ICHL, Rule 134, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter39_rule134

[28] ICRC Customary IHL Rule 134

[29] ICRC, CIHL Rule 134

[30] ICRC, 2016 commentary art. 12, paras. 1429-30

including those arising from social structures" and requires "equal respect, protection and care based on all the needs of women" .[31] For example, the Geneva Conventions and Additional Protocol I require that parties to an armed conflict treat pregnant women and nursing mothers with particular care, including with respect to medical assistance.[32] IHL establishes an affirmative duty to provide medical care for the wounded.[33]Additional Protocol I includes in its definition of the wounded and sick "*maternity cases" and "other persons who may be in need of immediate medical assistance or care, such as… expectant mothers*."[34]

Customary IHL prohibits sexual violence against any person, regardless of sex, applicable in both IAC and NIAC, and are also applicable to non-state actors. [35] The range of prohibited actions include rape and enforced prostitution, sexual slavery, forced pregnancy, forced sterilisation, forced public nudity or stripping, mutilation of sexual organs, forced marriage, forced inspections for virginity, sexual exploitation (such as obtaining sexual services in return for food or protection), forced abortions and sex trafficking.[36] The ICRC Commentary (2016) further notes that "there is a growing acknowledgement that women, men, girls and boys are affected by armed conflict in different ways" and "[s]ensitivity to the individual's inherent status, capacities and needs, including how these differ among men and women due to social, economic, cultural and political structures in society, contributes to the understanding of humane treatment under common Article 3".[37]

The complementary and mutually reinforcing protection of International Human Rights Law and IHL has been expressly recognized by international and regional courts and tribunals.[38] ICRC's customary IHL Study notes that human rights law instruments, documents and case law support, strengthen and clarify analogous principles of international humanitarian law.[39] For example, fundamental guarantees, including humane treatment, and non-discrimination, human rights law and the interpretation of human rights bodies can clarify analogous IHL principles.[40] As such, interpretation and guidance from human rights bodies regarding non discrimination against women and torture and cruel, inhuman, or degrading treatment can help define the contours of IHL .[41]

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[31] ICRC, 2016 commentary art. 12, paras. 1429-30

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

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

[34] Additional Protocol I, art. 8(a)

[35] ICRC CIHL Database Rule 93 ; see also Protocl I (Art. 75 (2)(b) and Protocol II Article 4 (2)(e)- https://ihl-databases.icrc.org/customary-ihl/eng/print/v1_rul_rule93

[36] ICRC Commentary Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949.**Commentary of 2016 Article 3 : Conflicts not of an international character**, available at https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?key=rape&action=openDocument&documentId=59F6CDFA490736C1C1257F7D004BA0EC

[37] ICRC CIHL, Rule 134 ; ICRC, 2016 Commentary, article 12, paras 1429-30.

[38] ICRC, Humanitarian Law, HR Law and Refugee Law—the Three Pillars, https://www.icrc.org/en/doc/resources/documents/statement/6t7g86.htm; OHCHR Report on HR in Conflict, , p. 118; Committee on the Elimination of Discrimination Against Women, General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, paras. 19-20, U.N. Doc. CEDAW/C/GC/30 (2013)..

[39] Customary International Humanitarian Law, part V, chapter 32 (SEE IF UPDATE); See also generally, Vienna Convention on the Law of Treaties, Article 31 (3) (c), in the interpretation of a treaty 'there shall be taken into account…any relevant rules of international law applicable tin the relations between the parties.'

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

[41] See ICRC, 2016 Commentary on the First Geneva Convention, art. 3 (citing to human rights bodies and standards to interpret the scope of humane treatment); International Criminal Tribunal for the Former Yugoslavia (ICTY), Prosecutor v. Furundzija, Case No. IT-95-17/1 (Trial Chamber), 10 December 1998, para. 159 (citing to the Convention Against Torture to interpret the definition of torture under IHL); see also Cordula Droege, 'In truth the leitmotiv': the prohibition of torture and other forms

4) Accountability in humanitarian settings

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.

An absence of accountability, remedy, and redress for violations of IHRL and IHL continues to be a key feature across humanitarian settings. Obligations to respect, protect, and fulfill SRHR receive even less attention and are even less likely to be addressed in such settings compared to non-conflict ones. The breakdown of state infrastructure and disruption in access to basic services can lead to traditional accountability mechanisms becoming even more inaccessible or unavailable to women. Such mechanisms include access to domestic courts and tribunals, administrative processes within health systems (such as maternal death surveillance and response mechanisms), and social accountability processes that prioritize community participation in decision-making. Moreover, accountability in these settings is often interpreted narrowly, either as health outcomes or limited to the punishment of perpetrators of crimes.

As the OHCHR notes in its technical guidance on addressing maternal mortality in humanitarian settings, human rights accountability entails multiple forms of monitoring, review, and oversight (e.g., administrative, social, political, and legal), and it applies to multiple actors.[lix]

Linked to a lack of accountability is the lack of data and evidence on the need for, provision of, and efficacy of comprehensive SRH services.[lx] Because of the insecure nature of these settings and systemic patterns of discrimination and gender inequality, including against people of diverse SOGIESC, collecting data and documenting access to SRH services and SRHR violations is extremely difficult.

An example of how international humanitarian law (IHL), international criminal law (ICL), and international humanitarian law (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.[lxi] While non-discriminatory treatment is prohibited under IHL on grounds of sex and on 'any other distinction founded on similar criteria,'[lxii] 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.'[lxiii] 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.[lxiv]

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of ill-treatment in international humanitarian law, 89 Int'l Rev. of the Red Cross 515, 517 (2007), https://www.icrc.org/eng/assets/files/other/irrc-867- droege.pdf (noting that "the notions of ill-treatment are so similar" in IHL and IHRL "that the interpretation of one body of law influences the other and vice versa"). Cf. Manfred Nowak and Ralph Janik, Torture, Cruel, Inhuman, or Degrading Treatment or Punishment, in The 1949 Geneva Conventions: A Commentary 320 (Clapham, Gaeta, Sassòli, eds.) (2015) (describing the different types of ill-treatment under IHRL, IHL, and ICL and noting that there are some differences in the definition and interpretation of these terms among different bodies and courts).

III. Suggested recommendations

We respectfully suggest that the Independent Expert's report include clear and specific language and recommendations recognizing:

- The legal obligations of States to provide sexual and reproductive health information and services free of coercion, discrimination, and violence and within a human rights-based approach including in humanitarian settings and in the context of the COVID-19 pandemic for all individuals in all their diversity.[42]
- the harmful impact of restrictive abortion laws and restrictive legal frameworks pertaining to SRHR on all persons who seek abortions, including victims and survivors of rape and sexual and gender-based violence, including in humanitarian settings and in the context of the COVID-19 pandemic, and urges States to guarantee access to safe and legal abortion on request which must include stronger regulation of refusal of care based on conscience or religion exercised by healthcare providers.
- fleshes out the importance of rights-based accountability for all persons, in humanitarian settings.
- recognizes the obligations non-state actors have in respecting, protecting and fulfilling human rights, including SRHR and access to SRH services in humanitarian settings, including during armed conflict.
- emphasizes the applicability of human rights in the range of humanitarian settings, including during armed conflict, and ensure the human rights protections and humanitarian principles underpin all interventions aimed at women and girls.
- recognizes the mutually reinforcing and complimentary nature of IHRL and IHL and recommends an inclusive interpretation of IHRL and IHL standards.

[i] Inter-American Commission on Human Rights. *Indigenous Women*. OEA/Ser.L/V/II. Doc. 44/17. 2017. para 39, available at: http://www.oas.org/en/iachr/reports/pdfs/IndigenousWomen.pdf; See also: Inter-American Commission on Human Rights *Indigenous Women – Brochure* (2017), p. 1 https://www.oas.org/es/cidh/indigenas/docs/pdf/Brochure-MujeresIndigenas.pdf
[ii] Inter-American Commission on Human Rights. *Indigenous Women*. OEA/Ser.L/V/II. Doc. 44/17. 2017. Paras 9, 10, 42, available at: http://www.oas.org/en/iachr/reports/pdfs/IndigenousWomen.pdf
[iii] U.N. Human Rights Council (U.N. HRC), 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 (39th Sess., 2018), paras. 29-30, U.N. Doc. A/HRC/39/26 (2018)
[iv] 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)
[v] IAWG, COVID-19 Pandemic Further Threatens Women and Girls Already at Risk in Humanitarian and Fragile Settings (2020), https://iawg.net/resources/advocating-for-sexual-and-reproductive-health-services-in-covid-19-response/covid-19-srh-full-advocacystatement
[vi] Center for Reproductive Rights, *Breaking Ground 2018: Treaty Monitoring Bodies on Reproductive Rights*, 2018, available at: https://reproductiverights.org/breaking-ground-2018-treaty-monitoring-bodies-on-reproductive-rights/
[vii] *Ibid.* See also: Convention on the Elimination of All Forms of Discrimination against Women, adopted Dec. 18, 1979, art. 1, 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); International Covenant on Civil and Political Rights, adopted Dec. 16, 1966, art. 3, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (entered into force Mar. 23, 1976); International Covenant on Economic, Social and Cultural Rights, adopted Dec. 16, 1966, art. 3, G.A. Res. 2200A (XXI), U.N. GAOR, Supp. No. 16, U.N. Doc. A/6316 (1966) (entered into force Jan. 3, 1976); Convention on the Rights of Persons with Disabilities, adopted Dec. 13, 2006, art, 6, G.A. Res. A/RES/61/106, U.N. GAOR, 61st Sess., U.N. Doc. A/61/611, (entered into force May 3, 2008); Convention on the Rights of the Child, adopted Nov. 20, 1989, art. 29(1)(d), G.A. Res. 44/25, annex, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/44/49 (1989) (entered into force Sept. 2, 1990), Human

[42] Also see Recommendations part in A/HRC/47/38, paras. 76-80

Rights Committee, Concluding Observations: Cape Verde, para. 8, U.N. Doc. CCPR/C/CPV/CO/1 (2012); Human Rights Committee, Concluding Observations: Jordan, para. 7, U.N. Doc. CCPR/C/JOR/CO/4 (2010); Human Rights Committee, Concluding Observations: Canada, para. 20, U.N. Doc. CCPR/C/79/Add.105 (1999); CEDAW Committee, Gen. Recommendation No. 25, para. 10; CRC Committee, Gen. Comment No. 15, para. 10; CPRD Committee, Concluding Observations: United Kingdom, U.N. Doc. CRPD/C/GBR/CO/1 (2017).

[viii] Center for Reproductive Rights, *op. cit.*, note 4.

[ix] CESCR Committee, Gen. Recommendation No. 22, para. 30.

[x] CEDAW Committee, General Recommendation No. 28, para. 31

[xi] *Ibid*, para. 15.

[xii] CEDAW Committee, General Recommendation No. 25: Article 4, para. 9; CESCR, General Comment No. 20, paras. 8, 9 & 39.

[xiii] CRC Committee, General Comment No. 15, para. 9.

[xiv] CRPD Committee, General Comment No. 6, paras. 19 and 21; CEDAW Committee, Gen. Recommendation No. 25, para. 12; CEDAW Committee, Gen. Recommendation No. 28, para. 18; ESCR Committee, Gen. Comment No. 20, para. 17; Human Rights Committee, General Comment No. 28, para. 30; CRPD Committee, General Comment No. 3, paras. 3, 4, 38.

[xv] CEDAW Committee, Gen. Recommendation No. 25, paras. 8-10; ESCR Committee, Gen. Comment No. 3, para. 10; Human Rights Committee, Gen. Comment No. 28, para. 3; CEDAW Committee, Gen. Recommendation No. 28, para. 20.

[xvi] Human Rights Committee, Concluding Observations: Cape Verde, para. 8, U.N. Doc. CCPR/C/ CPV/CO/1 (2012); Human Rights Committee, Concluding Observations: Jordan, para. 7, U.N. Doc. CCPR/C/JOR/CO/4 (2010); Human Rights Committee, Concluding Observations: Canada, para. 20, U.N. Doc. CCPR/C/79/Add.105 (1999); CEDAW Committee, Gen. Recommendation No. 25, supra note 3, para. 10; CRC Committee, Gen. Comment No. 15, supra note 4, para. 10; CPRD Committee, Concluding Observations: United Kingdom, U.N. Doc. CRPD/C/GBR/CO/1 (2017).

[xvii] Human Rights Committee, Concluding Observations: Kyrgyzstan, para. 13, U.N. Doc. CCPR/ CO/69/KGZ (2000); CRC Committee, Gen. Comment No. 15, supra note 4, paras. 10, 24.

[xviii] CEDAW Committee, *Gen. Recommendation No. 24*, para. 11.

[xix] ESCR Committee, *Gen. Comment No. 16*, para. 29.

[xx] CESCR Committee General Comment No. 22, ¶ 30;. CRC Committee, General Comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), ¶¶ 8-11, U.N. Doc. CRC/C/GC/15 (Apr. 17, 2013) [hereinafter CRC Committee General Comment No. 15]; CRPD Committee, General comment No. 3 (2016) on women and girls with disabilities, ¶ 2, U.N. Doc. CRPD/C/GC/3 (Nov. 25, 2016) [hereinafter CRPD General Comment No. 3] (noting barriers which "create situations of multiple and intersecting forms of discrimination against women and girls with disabilities"); HRC General Comment No. 28, ¶ 30; K.L. v. Peru, HRC, Commc'n No. 1153/2003, ¶¶ 6.3-6.5, U.N. Doc. CCPR/C/85/D/1153/2003 (2005) [hereinafter K.L. v. Peru]; Mellet v. Ireland, ¶ 7.11 (finding differential treatment where Ireland "failed to adequately take into account [woman's] medical needs and socioeconomic circumstances"); Whelan v. Ireland, ¶ 7.12 (same).

[xxi] *See, e.g.*, CEDAW Committee, *Concluding Observations: Thailand,* paras. 42-43, U.N. Doc. CEDAW/C/THA/CO/6-7 (2017); CEDAW Committee, *Concluding Observations: Lesotho,* paras. 32-33, U.N. Doc. CEDAW/C/LSO/CO/1-4 (2011).

[xxii] *Id*., paras. 30-31.

[xxiii] CRC Committee General Comment No. 20,para 59

[xxiv] CRC Committee General Comment No. 20,para 59

[xxv] CRC GC 20, para 60

[xxvi] CRC GC 20, para 60

[xxvii] CEDAW Committee, General Recommendation No. 30, para. 2.; Human Rights Committee, General Comment No. 36, paras. 2, 10, 64; CESCR Committee, General Comment No. 14, paras. 40, 65.; CESCR Committee, General Comment No. 3, para. 10.; Human Rights Committee, General Comment No. 31: The nature of the general legal obligation imposed on States parties to the Covenant, para. 11; Human Rights Committee, General Comment No. 29: States of emergency, para. 3; Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J., para. 22 (July 8).; Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J., para. 106 (July 9).; Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, 2005 I.C.J., para. 216 (Dec. 19).

[xxviii] Inter-Agency Working Group on Reproductive Health in Crises, May 2020, *COVID-19 Pandemic further threatens women and girls already at risk in humanitarian and fragile settings*, https://cdn.iawg.rygn.io/documents/IAWG-COVID-ADVOCACY-STATEMENT.pdf?mtime=20200512014036&focal=none

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[xxxiv] WHO, UNICEF, UNFPA, World Bank Group, & the United Nations Population Division, Trends in Maternal Mortality: 1990 to 2015, *Maternal Mortality Ratio (model estimate, per 100,000 live births): Syrian Arab Republic* (2015), *available at* http://data.worldbank.org/indicator/SH.STA.MMRT?locations=SY (last visited May 21, 2019).
[xxxv] Michelle Hynes, Ouahiba Sakani, Paul Spiegel, & Nadine Cornier, *A Study of Refugee Maternal Mortality in 10 Countries, 2008-2010*, 38:4 INTERNATIONAL PERSPECTIVES ON SEXUAL AND REPRODUCTIVE HEALTH 205, 210 (Dec. 2012) (noting that these ratios may be lower for a number of reasons, including as a result of targeted humanitarian care, but that these findings "should be interpreted with caution" as maternal deaths were likely underreported).
[xxxvi] Moreover, studies noting the correlation between maternal stress, pregnancy-related complications, and fetal development suggest longer-term, intergenerational effects of conflict and displacement. *See, e.g.*, Delan Devakumar, Marion Birch, David Osrin, Egbert Sondorp, & Jonathan CK Wells, *The intergenerational effects of war on the health of children* (Apr. 2014), 12:57 BMC MEDICINE, *available at* https://bmcmedicine.biomedcentral.com/articles/10.1186/1741-7015-12-57; E.J.H Mulder et al., *Prenatal maternal stress: effects on pregnancy and the (unborn) child* (June 2002), 70 EARLY HUMAN DEVELOPMENT 3; Lucy Ward, *Mother's stress harms foetus, research shows*, THE GUARDIAN (May 31, 2007), https://www.theguardian.com/science/2007/may/31/childrensservices.medicineandhealth.
[xxxvii] Amelia Reese Masterson, Jinan Usta, Jhumka Gupta, & Adrienne S. Ettinger, *Assessment of reproductive health and violence against women among displaced Syrians in Lebanon* (2014), 14:25 BMC WOMEN'S HEALTH 4, *available at* http://bmcwomenshealth.biomedcentral.com/articles/10.1186/1472-6874-14-25.
[xxxviii] Human Rights Committee, *General Comment No. 29: States of Emergency (Article 4)*, para. 1, U.N. Doc. CCPR/C/21/Rev.1/Add.11 (2001) [hereinafter Human Rights Committee, *Gen. Comment No. 29*]; OHCHR, INTERNATIONAL LEGAL PROTECTION OF HUMAN RIGHTS IN ARMED CONFLICT 10 (2011), *available at* http://www.ohchr.org/Documents/Publications/HR_in_armed_conflict.pdf. State obligations with respect to economic, social, and cultural rights, including the right to health, are subject to progressive realization, though states are obligated to take steps to the maximum of available resources to fully realize these rights. ICESCR, art. 2(1); Convention on the Rights of the Child, *adopted* Nov. 20, 1989, art. 4, G.A. Res. 44/25, annex, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/44/49 (1989), (*entered into force* Sept. 2, 1990) [hereinafter CRC]; CRPD, art. 4(2); *see also* ESCR Committee, *General Comment No. 3*, para. 9.

[xxxix] States cannot derogate from certain *jus cogens* norms, such as the prohibitions on torture, genocide, and slavery, even during situations of armed conflict. *See* Human Rights Committee, *Gen. Comment No. 29*, para. 7. Minimum core obligations with respect to economic, social, and cultural rights are not subject to resource availability and are non-derogable. *See* ESCR Committee, *Gen. Comment No. 14*, para 47; ESCR Committee, *General Comment No. 15: The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, at 13, para. 40, U.N. Doc. E/C.12/2002/11 (2003); *see also* OHCHR, PROTECTION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN CONFLICT, REPORT OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS 4-5 (2015), *available at* http://www.ohchr.org/Documents/Issues/ESCR/E-2015-59.pdf. At the regional level, the African Charter of Human and Peoples' Rights does not permit any grounds for derogation. *See* African Charter for Human and Peoples' Rights, *adopted* June 27, 1981, art. 25, O.A.U. Doc. CAB/LEG/67/3, rev. 5, 21 I.L.M. 58 (1982) (*entered into force* Oct. 21, 1986) (Banjul Charter).
[xl] Human Rights Committee, *Gen. Comment No. 29*, para. 8.
[xli] CEDAW Committee, *General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations*, para. 38(e), U.N. Doc. CEDAW/C/GC/30 (2013) [hereinafter CEDAW Committee, *Gen. Recommendation No. 30*]; *see also* CAT Committee, *Concluding Observations: Iraq*, para. 13, U.N. Doc. CAT/C/IRQ/CO/1 (2015).
[xlii] CEDAW Committee, *Gen. Recommendation No. 30*, para. 57.
[xliii] *See generally* BREAKING GROUND 2018
[xliv] States' obligations under the treaty "do not cease in periods of armed conflict or in states of emergency resulting from political events or natural disasters." The CEDAW Committee explained that these situations "have a deep impact on and broad consequences for the equal enjoyment and exercise by women of their fundamental rights" and called upon states to pursue strategies and measures aimed at addressing the particular needs of women during such states of emergency. CEDAW Committee, *General Recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, at 3, para. 11, U.N. Doc. CEDAW/C/GC/28 (2010) [hereinafter CEDAW Committee, *Gen. Recommendation No. 28*]. *See also* CEDAW Committee, *Gen. Recommendation No. 30*, para. 2 ("The Committee reiterates that States parties' obligations continue to apply during conflict or states of emergency without discrimination between citizens and non-citizens within their territory or effective control, even if not situated within the territory of the State party.").
[xlv] CEDAW Committee, *Gen. Recommendation No. 30*, para. 2.
[xlvi] CEDAW Committee, *Gen. Recommendation No. 28*, para. 11.
[xlvii] Human Rights Committee General Comment 36 para. 64, CEDAW Committee General Recommendation 30 paras. 9, 12 and 19
[xlviii] A/HRC/43/56 - Report of the Commission on Human Rights in South Sudan – Infographic - 20 February 2020; Report of the Commission on Human Rights in South Sudan, A/HRC/40/69
[xlix] 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

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[lii] OHCHR Report A/HRC/41/18, July 2019, https://www.ohchr.org/Documents/Countries/VE/A_HRC_41_18.docx
[liii] CEDAW Committee, Concluding Observations: Argentina, paras. 34-35, U.N. Doc. CEDAW/C/ ARG/CO/7 (2016); CEDAW Committee, Concluding Observations: Thailand, para. 39, U.N. Doc. CEDAW/C/THA/CO/6-7 (2017); CEDAW Committee, Concluding Observations: Congo, para. 36(f), U.N. Doc. CEDAW/C/COG/CO/6 (2012); CRC Committee, Concluding Observations: Central African Republic, para. 55, U.N. Doc. CRC/C/CAF/CO/2 (2017); CRC Committee, Concluding Observations: Nigeria, paras. 37-38, U.N. Doc. CEDAW/C/NGA/CO/7-8 (2017); ESCR Committee, General Comment No. 16, para. 29; ESCR Committee, Concluding Observations: Namibia, para. 65 (a), U.N. Doc. E/C.12/NAM/CO/1 (2016).
[liv] See, e.g., CEDAW Committee & CRC Committee, Joint General Recommendation No. 31 & General Comment No. 18, paras. 68-9. See also CRC Committee, Concluding Observations: Mongolia, para. 51(a), U.N. Doc. CRC/C/MNG/CO/3-4; ESCR Committee, Concluding Observations: Australia, para. 28, U.N. Doc. E/C.12/AUS/CO/4 (2009).
[lv] WHO, About social determinants of health (2017), available at: http://www.who.int/social_determinants/sdh_definition/en/.
[lvi] *Ibid.*
[lvii] ESCR Committee, Concluding Observations: Australia, para. 28, U.N. Doc. E/C.12/AUS/CO/4 (2009); WHO, About social determinants of health, *op. cit*. note 18.
37 *Ibid.*
[lviii] Working Group of Experts on People of African Descent, *Statement on COVID-19: Racial equity and racial equality must guide State action*, 6 April 2020, https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25768; Special Rapporteur on extreme poverty and human rights, *US COVID-19 strategy failing the poor, says UN expert*, April 16, 2020, https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25798&LangID=E; Treaty Monitoring Bodies Chairs' statement, *UN Human Rights Treaty Bodies call for human rights approach in fighting COVID-19*, https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25742&LangID=E; OHCHR Factsheet, *COVID-19 and Women's Human Rights*, 15 April 2020, www.ohchr.org/Documents/Issues/Women/COVID-19_and_Womens_Human_Rights.pdf; Compilation of Special Procedures' statements, https://www.ohchr.org/EN/HRBodies/SP/Pages/COVID-19-and-Special-Procedures.aspx.
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[lxii] ICRC, Customary IHL Database, Rule 88, https://ihl-databases.icrc.org/customaryihl/eng/docs/v1_rul_rule88 (last visited March 12, 2021).
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