**Comments from the Center for Reproductive Rights in response to the call for submissions from the Office of the High Commissioner for Human Rights on child, early, and forced marriage**

The Center for Reproductive Rights (the Center)—an international non-profit legal advocacy organization headquartered in New York City, with regional offices in Nairobi, Bogotá, Kathmandu, Geneva, and Washington, D.C.—uses the law to advance reproductive freedom as a fundamental human right that all governments are legally obligated to respect, protect, and fulfill. Since its inception twenty-five years ago, the Center has advocated for the realization of women and girls’ human rights on a broad range of issues, including the right to access sexual and reproductive health services; preventing and addressing sexual violence; and the eradication of harmful traditional practices, including child, early, and forced marriage. We are pleased to provide this submission to the Office of the High Commissioner for Human Rights on child, early, and forced marriage in humanitarian settings.

This submission begins by discussing the nature, scope, and effects of child, early, and forced marriage in humanitarian settings. Next it discusses states’ human rights obligations, which continue in humanitarian settings. Finally, it outlines key principles for addressing the root causes of child, early, and forced marriage in humanitarian settings and recommends measures for preventing and fighting impunity for this harmful practice.

1. **Nature, scope, and effects of child, early, and forced marriage in humanitarian settings**

In humanitarian settings, women and girls are at heightened risk of human rights abuses.[[1]](#endnote-1) In particular, humanitarian situations have been linked to an increase in child, early, and forced marriage.[[2]](#endnote-2) For instance, according to the United Nations Children’s Fund (UNICEF), the rate of child, early, and forced marriage among Syrian refugee girls in Jordan rose to 32% in 2014, compared to an average of 13% in Syria before the war.[[3]](#endnote-3) Various reports suggest that the increase in child, early, and forced marriage is attributable in part to a fear of sexual violence and economic hardships.[[4]](#endnote-4) There is a growing body of evidence to suggest rising rates of child, early, and forced marriage in humanitarian settings due to a lack of economic resources and because families perceive marriage as a way to protect girls from other forms of violence, including sexual violence, the risk of which increases in these settings.[[5]](#endnote-5)

Moreover, in some humanitarian settings, armed groups have created systems of forced marriage and sexual slavery.[[6]](#endnote-6) For instance, in Nigeria, systematic sexual and gender-based violence has been a well-documented feature of Boko Haram’s treatment of the women and girls it abducts, but data on the scope and extent of this violence remains difficult to obtain.[[7]](#endnote-7) More reliable and comprehensive data on sexual violence in conflict and displacement settings is necessary,[[8]](#endnote-8) though it continues to be difficult to collect due to stigma and other barriers associated with reporting these violations.[[9]](#endnote-9)

Following conflict and violence in Myanmar, reports indicate that Rohingya girls have experienced especially high rates of child marriage. Violence and communal clashes that occurred between 2012 and early 2017 forced more than 168,000 Rohingya Muslims living in western Myanmar to flee their homes.[[10]](#endnote-10) A survey of 85 Rohingya women and girls who fled to India, Malaysia, and Indonesia during that time found that about 60 percent were married before they turned 18.[[11]](#endnote-11) In August 2017, military operations, which have been condemned by the United Nations as “ethnic cleansing,”[[12]](#endnote-12) caused more than 700,000 additional Rohingya Muslims to also flee their homes in western Myanmar.[[13]](#endnote-13) In Cox’s Bazar, Bangladesh, Rohingya girls as young as 11 have been forced to marry by their families who have hopes of securing more food for themselves and the rest of their families.[[14]](#endnote-14) Other Rohingya girls are being sold to much older men in places such as India.[[15]](#endnote-15) More data on the prevalence of child marriage and sex trafficking of Rohingya girls is needed.

The effects of child, early, and forced marriage can be significant. For instance, of the children who have dropped out of school since the 2015 earthquakes in Nepal, 65% have been girls, and respondents of a survey stated early marriage as the primary cause of these dropouts.[[16]](#endnote-16) Though it is difficult to compare data with pre-earthquake rates and age of marriage in Nepal, available information suggests that child marriage is probably occurring at a higher rate compared to the time immediately before the earthquakes.[[17]](#endnote-17)

In addition to limiting the education, work, and life prospects of girls, child marriage poses several risks to girls’ sexual and reproductive health and rights. There is convincing evidence to demonstrate high rates of maternal mortality and morbidity for adolescent pregnancy, which is a risk of child, early, and forced marriage.[[18]](#endnote-18) Adolescent girls under 15 years old experience the highest rates of maternal mortality,[[19]](#endnote-19) as early pregnancy greatly increases the risk of serious complications.[[20]](#endnote-20) Complications in pregnancy and childbirth are a leading cause of death among adolescent girls in developing countries.[[21]](#endnote-21) Treaty bodies have linked high rates of maternal mortality to, *inter alia*, lack of access to reproductive health services and high rates adolescent pregnancy and child marriage.[[22]](#endnote-22) Moreover, in humanitarian settings, disintegrating health infrastructure can have critical impacts on reproductive health. In countries designated as fragile states, the estimated lifetime risk of maternal mortality is 1 in 54, as compared to a 1 in 180 global lifetime risk.[[23]](#endnote-23)

Girls who are subjected to child marriage are also often less able to make important reproductive health decisions such as accessing contraception to delay pregnancy, either because of power dynamics within their relationships[[24]](#endnote-24) or laws and health care practices that otherwise limit the reproductive health decision-making power of adolescents. For instance, many states require that girls obtain spousal consent to access a range of reproductive health services, including contraception and abortion,[[25]](#endnote-25) denying married girls the ability to control this aspect of their lives.

1. **Human rights standards in humanitarian settings**
   1. Child, early, and forced marriage violates international human rights law

Children are recognized under international human rights law as requiring special care and enjoying the right to special measures of protection.[[26]](#endnote-26) This protection is enshrined in the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), as well as in the International Covenant on Civil and Political Rights (ICCPR) and the Covenant on Economic, Social, and Cultural Rights (CESCR).[[27]](#endnote-27) The Human Rights Committee has established that the obligation to protect children requires states parties to “eradicate both through legislation and any other appropriate measures, all cultural or religious practices which jeopardize the freedom and well-being of female children.”[[28]](#endnote-28)

The CRC Committee has repeatedly expressed concern that the persistence of child, early, and forced marriage undermines girls’ status and dignity[[29]](#endnote-29); negatively impacts girls’ health, development, and full enjoyment of their rights; and exposes girls to early pregnancy.[[30]](#endnote-30) The CRC Committee’s General Comment 4 recognizes that “early marriage and pregnancy are significant factors in health problems related to sexual and reproductive health, including HIV/AIDS.”[[31]](#endnote-31) The CEDAW Committee has also expressed concern over child marriage, noting that it negatively impacts girls’ equal right to education.[[32]](#endnote-32) In a joint General Comment, the CRC and CEDAW Committees linked child, early, and forced marriage to higher than average maternal morbidity and mortality rates, lack of decision-making power, higher rates of school dropout, increased risk of domestic violence, in addition to limiting the enjoyment of the right to freedom of movement.[[33]](#endnote-33)

Child, early, and forced marriage is also recognized as a form of gender-based violence.[[34]](#endnote-34) The CRC obligates states parties to “take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.”[[35]](#endnote-35) Officials at all levels of government are responsible for preventing violence against children.[[36]](#endnote-36) In General Comment No. 22, the CESCR Committee explicates that states must enact and enforce the legal prohibition all forms of gender-based violence, including child, early, and forced marriage.[[37]](#endnote-37) The Special Rapporteur on Violence against Women in her report on her visit to India noted that “the high prevalence of [child, early, and forced] marriages continues to endanger the lives of girls, whether in respect of domestic violence, marital rape or early pregnancies. It also deprives them of numerous human rights, including the right to education and the enjoyment of their childhood.”[[38]](#endnote-38)

Moreover, child, early, and forced marriage violates women and girl’s right to equality and non-discrimination, which is guaranteed under international human rights treaties.[[39]](#endnote-39) States parties must ensure both formal and substantive equality, meaning that women and girls must be treated equally under the law as well as enjoy equality of results and opportunities; upholding this right requires states parties to ensure women’s distinct biological capacity to reproduce does not lead to violations of their rights.[[40]](#endnote-40) Under international law, child, early, and forced marriage is recognized as a violation of women’s rights to non-discrimination and equal enjoyment of their human rights.[[41]](#endnote-41) Treaty monitoring bodies have emphasized that child marriage results from discriminatory social attitudes, and causes suffering and marginalization of women.[[42]](#endnote-42) The treaty monitoring bodies have repeatedly expressed concern where child marriage persists despite legal prohibitions,[[43]](#endnote-43) and affirmed that states parties must ensure there is not impunity where child marriage occurs.[[44]](#endnote-44)

Additionally, human rights experts have recognized that child marriage may constitute torture and other forms of cruel, inhuman, or degrading treatment (TCIDT),[[45]](#endnote-45) particularly where governments fail to “set a minimum age of marriage that complies with international standards,”[[46]](#endnote-46) do not eradicate forms of marriage that permit sexual exploitation of children,[[47]](#endnote-47) or allow child marriage to occur despite laws setting the minimum age of marriage at 18.[[48]](#endnote-48) The failure of governments to introduce and enforce laws prohibiting child marriage and to eliminate discriminatory patriarchal norms about girls’ value perpetuates girls’ powerlessness to challenge the practice of child marriage.

* 1. Women and girls’ rights are not suspended in humanitarian settings

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 even in humanitarian settings. Although international human rights law permits states to derogate from certain civil and political rights in some circumstances and to limit certain obligations with respect to economic, social, and cultural rights depending on resource availability,[[49]](#endnote-49) human rights treaty bodies have emphasized that such derogations are subject to strict conditions and that certain minimum core obligations are non-derogable.[[50]](#endnote-50) Even where derogations are permitted, the measures taken cannot involve discrimination based solely on prohibited grounds, including sex.[[51]](#endnote-51)

With the prevalence of sexual violence in humanitarian settings, human rights bodies increasingly have provided recommendations regarding gender-based violence experienced by women and girls, explaining that the right to be free from gender-based violence still applies in humanitarian settings. In its general recommendation 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.[[52]](#endnote-52) The Committee also specifically calls on states to safeguard refugees and internally displaced persons (IDPs) from child, early, and forced marriage and to provide them with immediate access to medical services and to create accountability mechanisms for gender-based violence in all displacement settings.[[53]](#endnote-53)

Moreover, within the context of humanitarian settings, human rights bodies hold that the right to equality and non-discrimination applies.[[54]](#endnote-54) 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.[[55]](#endnote-55) 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.”[[56]](#endnote-56) 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.”[[57]](#endnote-57) Because child, early, and forced marriage is a form of discrimination based on sex, states must take steps to eradicate the practice.

The CRC Committee has also found that states’ obligations apply in humanitarian settings. For instance, the CRC Committee found that states should prioritize the progressive realization of children’s right to health, “even in the context of political or economic crisis or emergency situations.”[[58]](#endnote-58) This requires that “children’s health and related policies, programmes and services be planned, designed, financed and implemented in a sustainable manner.”[[59]](#endnote-59) Moreover, the CRC Committee has expressed concern that humanitarian programs have failed to address the specific needs and rights of adolescents and has noted that “emergency preparedness programs should address adolescents, recognizing both their vulnerably and right to protection, and their potential role in supporting communities and helping mitigate risk.”[[60]](#endnote-60)

Additionally, although the ICCPR allows states to derogate from some obligations during public emergencies in certain limited circumstances, the ICCPR also states that the rights to life and to be free from torture or ill-treatment—both of which underlie states’ obligations to ensure reproductive rights and address violence against women—are non-derogable, even in humanitarian settings.[[61]](#endnote-61) This includes the right to be free from TCIDT, which cannot be diminished under any circumstance.[[62]](#endnote-62) Because child, early, and forced marriage has been recognized as a form of TCIDT in certain circumstances, states have additional obligations to prevent and address early, child, and forced marriage.

1. **Key principles for addressing root causes of child, early and forced marriage in humanitarian settings**

In humanitarian settings, women and girls are at elevated risk of gender-based violence, including child, early, and forced marriage. In these settings, where state institutions are weakened, overwhelmed, or not functioning, humanitarian organizations play an important role in ensuring the provision of basic services and goods.[[63]](#endnote-63) Access to these goods and services can play an important role in preventing early, child, and forced marriage and providing remedies for girls who are already married.[[64]](#endnote-64) In addition to the legal obligations detailed above, human rights principles are critical to ensuring that humanitarian funding, programs, and policies are driven by, benefiting, and accountable to the individuals most directly affected by them, including women and girls experiencing child, early, and forced marriage.[[65]](#endnote-65) Principles of equality and non-discrimination, participation, transparency, and accountability are foundational to international human rights law and are necessary to guide and inform all aspects of humanitarian service provision to ensure that it reflects and meets the needs of the individuals and communities most directly affected.[[66]](#endnote-66)

* 1. Equality and non-discrimination

Even in humanitarian settings, women’s rights are not suspended, and states must continue to respect, protect, and fulfill women’s right to equality.[[67]](#endnote-67) Principles of non-discrimination and equality are central to ensuring that humanitarian programs and policies recognize and address the root causes of child, early and forced marriage in humanitarian settings to better prevent and eradicate these harmful practices.[[68]](#endnote-68) Aid efforts guided by the principles of non-discrimination and equality, moreover, prioritize the needs of marginalized or vulnerable groups or individuals.[[69]](#endnote-69) To ensure that programs are accessible to the most vulnerable requires agencies and donors to monitor and collect data disaggregated on a number of different grounds, including, but not limited to, gender, age, ethnicity, religion, and geographic location.[[70]](#endnote-70)

* 1. Meaningful participation of women and girls

Meaningful participation of women and girls in humanitarian settings, particularly those experiencing or vulnerable to child, early, and forced marriage, is a key priority in all stages of humanitarian response, from the development to the implementation, monitoring, and evaluation of service policies and programs.[[71]](#endnote-71) A human-rights based approach recognizes the agency of affected individuals to participate in, shape, and make decisions regarding programs and policies that are intended to be for their benefit.[[72]](#endnote-72)

* 1. Effective accountability mechanisms

A human rights-based approach also prioritizes a broad and robust understanding of accountability to ensure that policymakers, decision-makers, and others who have an impact on affected individuals and communities are held responsible for their actions and decisions and that women and girls whose rights have been violated through child, early, and forced marriage have access to remedies. Effective accountability mechanisms require participation and transparency as well as the ability to confer meaningful and effective remedies to victims of violations on a basis of non-discrimination.[[73]](#endnote-73) International human rights and political bodies have recognized that accountability requires prompt investigation into violations and punishment of perpetrators, as well as legal and policy shifts in order to prevent future violations.[[74]](#endnote-74) Remedies, moreover, must aim to restore the rights of victims of child, early, and forced marriage and must include adequate, effective, and prompt reparation, forms of which include restitution, compensation, rehabilitation (e.g. medical or psychological services), satisfaction, and guarantees of non-repetition.[[75]](#endnote-75) Remedies for married girls should include access to sexual and reproductive health services, which can be especially difficult to obtain in humanitarian settings.[[76]](#endnote-76)

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

1. **Measures to prevent and fight impunity for child, early and forced marriage in humanitarian settings**

Finally, the following measures should be recommended to prevent and fight against impunity for child, early, and forced marriage in humanitarian settings:

* Affirm states’ obligations with respect to the rights of women and girls, including reproductive rights and the right to be free from violence, in humanitarian settings.
* Recommend that, as a means of reducing the risk to women and girls of violations of their rights in humanitarian settings, states adopt and implement laws, policies, and practices that ensure protection of and accountability for violations of the full range of women’s and girls’ sexual and reproductive health and rights and women’s and girls’ rights to freedom from gender-based violence, including child, early, and forced marriage.
* Recommend that states, following a crisis, effectively enforce laws prohibiting child marriage and prioritize creating an environment that ensures the security and well-being of girls. This may include establishing girl-specific programs and shelters that integrate girls in the post-disaster relief efforts and provide alternatives to child marriage; ensuring gender-segregated facilities; and provide providing education to girls and families which includes information on the risks of child marriage.
* Recommend that states provide and ensure access to sexual and reproductive health services for all women and girls, especially ensuring that married girls are able to obtain these services.
* Invest in technical expertise and allocate resources to address the distinct needs of women and girls subject to violence.[[77]](#endnote-77)

We are grateful for this opportunity to input in this report. Should the mandate need any additional information, please do not hesitate to reach out to Rebecca Brown, Director for Global Advocacy [rbrown@reprorights.org](mailto:rbrown@reprorights.org)

1. United Nations Population Fund (UNFPA), Shelter from the Storm: A transformative agenda for women and girls in a crisis-prone world 38–39 (2015) [hereinafter UNFPA, Shelter from the Storm]. [↑](#endnote-ref-1)
2. *Id.* at 50. [↑](#endnote-ref-2)
3. Press Release, United Nations Children’s Fund (UNICEF), Concern over child marriage among vulnerable girls in Jordan (July 16, 2014), <https://www.unicef.org/mena/press-releases/concern-over-child-marriage-in-jordan>. [↑](#endnote-ref-3)
4. UNFPA, Shelter from the Storm, *supra* note 1, at 50; *see also* UNFPA, *10 things you should know about women & the world’s humanitarian crisis* (23 May 2016), *available at* https://www.unfpa.org/news/10-things-you-should-know-about-women-world%E2%80%99s-humanitarian-crises (last visited Feb. 20, 2018). [↑](#endnote-ref-4)
5. As highlighted in the following reports, there is no evidence that marriage protects women and girls from violence. *See* United Nations High Commissioner for Human Rights (OHCHR), *Preventing and Eliminating Child, Early and Forced* Marriage, para. 20, U.N. Doc. A/HRC/26/22 (2014); Save the Children, Too Young to Wed: The Growing Problem of Child Marriage Among Syrian Girls in Jordan 1 (2014), *available at* http://www.savethechildren.org/atf/cf/%7B9def2ebe-10ae-432c-9bd0-df91d2eba74a%7D/TOO\_YOUNG\_TO\_WED\_REPORT\_0714.PDF. [↑](#endnote-ref-5)
6. *See, e.g.*, U.N. Human Rights Council, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, U.N. Doc. A/HRC/S-17/2/Add.1 (Nov. 23, 2011); U.N. Human Rights Council, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, *“They came to destroy”: ISIS Crimes Against the Yazidis*, U.N. Doc. A/HRC/32/CRP.2 (June 15, 2016); Human Rights Watch, “Those Terrible Weeks in their camp”: Boko Haram Violence against Women and Girls in Northeast Nigeria (Oct. 27, 2014), *available at* https://www.hrw.org/report/2014/10/27/those-terrible-weeks-their-camp/boko-haram-violence-against-women-and-girls; Human Rights Watch, “Our Rights are Fundamental to Peace” (Aug. 13, 2015), *available at* <https://www.hrw.org/sites/default/files/supporting_resources/our_rights_are_fundamental_to_peace.pdf>. [↑](#endnote-ref-6)
7. Elizabeth J. Rushing, Joe Read, *Nigeria: multiple displacement crises overshadowed by Boko Haram*, Internal Displacement Monitoring Centre (Dec. 9, 2014), *available at* http://www.internal-displacement.org/sub-saharan-africa/nigeria/2014/nigeria-multiple-displacement-crises-overshadowed-by-boko-haram. [↑](#endnote-ref-7)
8. Tia Palermo and Amber Peterman, *Undercounting, over-counting, and the longevity of flawed estimates: statistics on sexual violence in conflict*, 89 Bulletin of the World Health Organization (July 2011), *available at* http://www.who.int/bulletin/volumes/89/12/11-089888/en/. [↑](#endnote-ref-8)
9. The Global Study on the implementation of United Nations Security Council Resolution 1325 on Women and Peace and Security, which highlights the role of women in conflict prevention, resolution and peacebuilding, reports that a large number of women and girls do not report sexual violence “because there are no easily accessible services or ways to report safely, receive help and be treated with dignity.” UN Women, *Preventing Conflict, Transforming Justice, Securing the Peace: A Global Study on the Implementation of the UNSC Resolution 1325*, at 73 (2015), *available at* http://www.unwomen.org/~/media/files/un%20women/wps/highlights/unw-global-study-1325-2015.pdf. [↑](#endnote-ref-9)
10. Reuters Staff, *Over half of Rohingya girls who fled violence became child brides- U.N. survey*, Reuters (May 4, 2017). [↑](#endnote-ref-10)
11. *Id*. [↑](#endnote-ref-11)
12. See Press Release, OHCHR, *Myanmar: Senior UN human rights official decries continued ethnic cleansing in Rakhine State,*  March 6th, 2018, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22761&LangID=E> [↑](#endnote-ref-12)
13. *See* Fiona MacGregor, *Rohingya girls as young as 12 compelled to marry just to get food*, The Guardian (Nov. 30, 2017). [↑](#endnote-ref-13)
14. *See id.*;Ann Taylor, *Child Marriage in the Rohingya Camps in Bangladesh*, The Atlantic (Dec. 14, 2017). [↑](#endnote-ref-14)
15. Roli Srivastava, *Lured with a happily-ever-after dream, Rohingya girls sold in India*, Reuters (Jan. 22, 2018). [↑](#endnote-ref-15)
16. People in Need, Her Safety Assessment Report 12(November 2015), *available at* https://www.clovekvtisni.cz/media/publications/532/file/1450100038-her-safety-assessment-final.pdf. [↑](#endnote-ref-16)
17. *Id*. [↑](#endnote-ref-17)
18. *See* WHO, *Maternal mortality: Fact sheet* (Nov. 2016), *available at* http://www.who.int/mediacentre/factsheets/fs348/en/. [↑](#endnote-ref-18)
19. *Id*. [↑](#endnote-ref-19)
20. UNFPA, Marrying too Young: End Child Marriage11 (2012), *available at*  https://www.unfpa.org/sites/default/files/pub-pdf/MarryingTooYoung.pdf. [↑](#endnote-ref-20)
21. *Id*. [↑](#endnote-ref-21)
22. *See* CEDAW and CRC Committees, *Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child on harmful practices*, para. 22, U.N. Doc. CEDAW/C/GC/31-CRC/C/GC/18 (2014) [hereinafter CEDAW and CRC Committees, *Joint general recommendation*]. *See also* CEDAW Committee, *Concluding Observations: Bangladesh*, para. 34, U.N. Doc. CEDAW/C/BGD/CO/8 (2016); *Argentina*,para. 32, U.N. Doc. CEDAW/C/ARG/CO/7 (2016); *Malawi*, para. 31, U.N. Doc. CEDAW/C/MWI/CO (2006); CESCR, *Concluding Observations: El Salvador*, para. 22, U.N. Doc. E/C.12/SLV/ CO/3-5 (2014); HRC, *Concluding Observations: Jamaica*,para. 25, U.N. Doc. CCPR/C/JAM/CO/4 (2016); *Panama*, para. 9, U.N. Doc. CCPR/C/PAN/CO/3 (2008); CRC Committee, *Concluding Observations: Haiti*, para. 46, U.N. Doc. CRC/C/15/ Add.202 (2003); Committee Against Torture, *Concluding Observations: Yemen*, para. 31, U.N. Doc. CAT/C/YEM/ CO/2/Rev. 1 (2010). [↑](#endnote-ref-22)
23. WHO, UNICEF, UNFPA, World Bank Group, and the United Nations Population Division, Trends in Maternal Mortality: 1990 to 2015, at 15, 26 (2012), *available at* http://apps.who.int/iris/bitstream/10665/194254/1/9789241565141\_eng.pdf. [↑](#endnote-ref-23)
24. UNFPA, Shelter from the Storm, *supra* note 1, at 51. [↑](#endnote-ref-24)
25. Center for Reproductive Rights, *Breaking Ground 2018: Treaty Monitoring Bodies on Reproductive Rights* (2018) *available* at https://www.reproductiverights.org/document/breaking-ground-2018-treaty-monitoring-bodies-on-reproductive-rights. [↑](#endnote-ref-25)
26. Universal Declaration of Human Rights, adopted Dec. 10, 1948, G.A. Res. 217A (III), art. 25(2), U.N. Doc A/810 at 71 (1948); Convention on the Rights of the Child, adopted Nov. 20, 1989, preamble, 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]; International Covenant on Civil and Political Rights, adopted Dec 16th, 1966, art. 24, 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) [hereinafter ICCPR]; International Covenant on Economic, Social, and Cultural Rights, adopted Dec. 16th, 1966, art. 10(3), G.A. Res. 2200A (XXI), U.N. GAOR, Supp. No. 16, U.N. Doc. A/6316 (1966) (entered into force Jan. 3, 1976) [hereinafter ICESCR]. [↑](#endnote-ref-26)
27. CRC, *supra* note 26, art. 24; Convention on the Elimination of All Forms of Discrimination against Women, adopted Dec. 18, 1979, art.16(2), G.A. Res. 34/180, U.N. GOAR, 34th Sess., Supp. No. 46, at 47, U.N. Doc. A/34/46, U.N.T.S. 13 (entered into force Sept. 3rd, 1981) [hereinafter CEDAW]; ICESCR, *supra* note 26, at para. 3; ICCPR, *supra* note 26, art. 23. [↑](#endnote-ref-27)
28. HRC, *General Comment No. 28: (Article 3) The equality of rights between men and women (68th Sess., 2000)*, in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, at 233, para. 28, U.N. Doc. HRI/GEN/1/ Rev.9 (Vol. I) (2008). [↑](#endnote-ref-28)
29. CRC Committee, *Concluding Observations: Cameroon*, para. 59, U.N. Doc. CRC/C/CMR/CO/2 (2010). [↑](#endnote-ref-29)
30. CRC Committee, *Concluding Observations: Afghanistan*, para. 53, U.N. Doc. CRC/C/AFG/CO/1 (2011); *Togo*, para. 55, U.N. Doc. CRC/C/TGO/CO/3-4 (2012). [↑](#endnote-ref-30)
31. CRC Committee, *General Comment No. 4: Adolescent health and development in the context of the Convention on the Rights of the Child, (33rd Sess., 2003)*, in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, at 416, para. 20, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. II) (2008). [↑](#endnote-ref-31)
32. CEDAW Committee, *General recommendation No. 36 (2017) on the right of girls and women to education*, paras. 33, 52, 53, U.N. Doc. CEDAW/C/GC/36 (2017). [↑](#endnote-ref-32)
33. CEDAW and CRC Committees, *Joint general recommendation, supra* note 22, at para. 22. [↑](#endnote-ref-33)
34. CRC Committee, *General Comment No. 13: The right of the child from freedom of all forms of violence*, 56th Sess., para. 29(e), U.N. Doc. CRC/C/GC/13 (2011). *See also* CESCR, *Concluding Observations: Afghanistan*, paras. 18, 28, U.N. Doc E/C.12/ AFG/CO/2-4 (2010); *Philippines*, para. 18, U.N. Doc E/C.12/PHL/CO/4 (2008). [↑](#endnote-ref-34)
35. CRC, *supra* note 26, art. 19 [↑](#endnote-ref-35)
36. CRC Committee, *Gen. Comment No. 13*, *supra* note 34, para. 32. [↑](#endnote-ref-36)
37. CESCR, *General Comment No. 22 (2016) on the Right to sexual and reproductive health*, para. 49(c), U.N. Doc. E/C.12/GC/22 (2016) [hereinafter CESCR, *General Comment No. 22*]. [↑](#endnote-ref-37)
38. Special Rapporteur on violence against women, its causes and consequences, *Rep. of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo – Addendum – Mission to India,* para. 13, U.N. Doc. A/HRC/26/38/Add.1 (2014). [↑](#endnote-ref-38)
39. ICCPR, *supra* note 26, art. 3, 26; ICESCR, *supra* note 26, art. 3; CEDAW, *supra* note 27, art. 1. [↑](#endnote-ref-39)
40. *See* CEDAW Committee, *General Recommendation No. 25 (30th Sess., 2004)*, in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, at 366-367, paras. 7-10, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. II) (2008); Special Rapporteur on violence against women, its causes and consequences, Rep. of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights resolution 2001/49, *Cultural practices in the family that are violent towards women*, para. 90, U.N. Doc. E/CN.4/2002/83 (Jan. 31, 2002). [↑](#endnote-ref-40)
41. CESCR, *General Comment No. 16: The equal right of men and women to the enjoyment of all economic, social, and cultural rights (Art. 3)*, (34th Sess., 2005) in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, at 199, para. 27, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (2008); CEDAW Committee, *Concluding Observations: Italy*, paras. 52, 53, U.N. Doc. CEDAW/C/ITA/CO/6 (2011); CRC Committee, *Concluding Observations: Bangladesh*, para. 32, U.N. Doc. CRC/C/BGD/CO/4, (2009); *Pakistan*, paras. 18-19, U.N. Doc. CRC/C/PAK/CO/5 (2016); Human Rights Committee, *Concluding Observations: Yemen*, para. 10, U.N. Doc. CCPR/CO/75/YEM (2002). [↑](#endnote-ref-41)
42. CRC Committee, *Concluding Observations: India*, paras. 60- 61, U.N. Doc. CRC/C/15/Add.228 26 (2004); *Afghanistan*, para. 55, U.N. Doc CRC/C/AFG/CO/1 (2011); CEDAW Committee, *General Recommendation No. 21: Equality in marriage and family relations*, (13th Sess., 1994), in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, at 337, paras. 36-37, U.N. Doc. HRI/GEN/1/ Rev.9 (Vol. II) (2008). [↑](#endnote-ref-42)
43. CEDAW Committee, *Concluding Observations: India*, paras. 38-39, U.N. Doc. CEDAW/C/IND/4-5 (2014); *Bangladesh*, para. 39, CEDAW/C/BGD/CO/7 (2011). [↑](#endnote-ref-43)
44. Human Rights Committee, Concluding Observations: Democratic Republic of the Congo, para. 11, U.N. Doc. CCPR/C/COD/CO/3 (2006). [↑](#endnote-ref-44)
45. CAT Committee, *Concluding Observations: Bulgaria*, para. 26, U.N. Doc. CAT/C/BGR/CO/4-5 (2011); *Yemen*, para. 31, U.N. Doc CAT/C/YEM/CO/2 (2009); Human Rights Committee, *Concluding Observations: Yemen*, para. 10, U.N. Doc. CCPR/C/YEM/CO/5 (2012); Report of Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, U.N. Doc A/HRC/31/57, paras 63-64 (2016), *available at* https://undocs.org/A/HRC/31/57 [↑](#endnote-ref-45)
46. Human Rights Committee, *Concluding Observations: Yemen*, para. 10, U.N. Doc. CCPR/C/YEM/CO/5 (2012). [↑](#endnote-ref-46)
47. *Id*. [↑](#endnote-ref-47)
48. Human Rights Committee, *Concluding Observations: Bulgaria*, para. 15, U.N. Doc CCPR/C/BGR/CO/3 (2011). [↑](#endnote-ref-48)
49. Human Rights Committee, *General Comment No. 29: Article 4: Derogations during a State of Emergency*, para. 1, U.N. Doc. CCPR/C/21/Rev.1/Add.11 (2001) [hereinafter Human Rights Committee, *Gen. Comment No. 29*]; OHCHR, 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, *supra* note 26, art. 2(1); CRC, *supra* note 26, at art. 4; Convention on the Rights of Persons with Disabilities, *adopted* Dec. 13, 2006, art, 4(2), G.A. Res. A/RES/61/106, U.N. GAOR, 61st Sess., U.N. Doc. A/61/611 (1980) (*entered into force* May 3 2008); *see also* CESCR, *General Comment No. 3: The Nature of States Parties’ Obligations (Art. 2, Para. 1, of the Covenant)*, para. 9, U.N. Doc. E/1991/23 (1990). [↑](#endnote-ref-49)
50. States cannot derogate from certain *jus cogens* norms, such as the prohibitions on torture, genocide, and slavery, even during situations of armed conflict. Human Rights Committee, *Gen. Comment No. 29*, *supra* note 49, para. 7. Minimum core obligations with respect to economic, social, and cultural rights are not subject to resource availability and are non-derogable. CESCR, *General Comment No. 14 (2000): The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, para. 47, U.N. Doc. E/C.12/2000/4 (2000) [hereinafter CESCR, *Gen. Comment No. 14*]; CESCR, *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)*, para. 40, U.N. Doc. E/C.12/2002/11 (2003); *see also* OHCHR, Protection of Economic, Social and Cultural Rights in Conflict, Report of the High Commissioner for Human Rights 4-5 (2015), *available at* <http://www.ohchr.org/Documents/Issues/ESCR/E-2015-59.pdf>. [↑](#endnote-ref-50)
51. Human Rights Committee, *Gen. Comment No. 29*, *supra* note 49, at para. 8. [↑](#endnote-ref-51)
52. CEDAW Committee, *Gen. 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). [↑](#endnote-ref-52)
53. CEDAW Committee, *Gen. Recommendation No. 30*, *supra* note 52, at para. 57. [↑](#endnote-ref-53)
54. *See generally* Center for Reproductive Rights, Breaking Ground (2018), *available* at https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/Breaking-Ground-2018.pdf; Center for Reproductive Rights, Reproductive Rights are HumanRights (2009), *available at* https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/RRareHR\_final.pdf. [↑](#endnote-ref-54)
55. 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*, 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*, *supra* note 52, at para. 2, U.N. Doc. CEDAW/C/GC/30 (2013) (“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.”). [↑](#endnote-ref-55)
56. CEDAW Committee, *Gen. Recommendation No. 30*, *supra* note 52, at para. 2. [↑](#endnote-ref-56)
57. CEDAW Committee, *General Recommendation No. 28, supra* note 55, at para. 11. [↑](#endnote-ref-57)
58. Committee on the Rights of the Child, *General Comment No. 15 on the Right of the Child to the Highest Attainable Standard of Health*, para. 74, U.N. Doc. CRC/C/GC/15 (2013). [↑](#endnote-ref-58)
59. *Id.* [↑](#endnote-ref-59)
60. CRC Committee, *General comment No. 20 (2016) on the implementation of the rights of the child during adolescence*, paras. 79, 80, U.N. Doc. CRC/C/GC/20 (2016) [hereinafter CRC Committee, *General comment No. 20*]. [↑](#endnote-ref-60)
61. ICCPR, *supra* note 26, arts. 4, 6 and 7; Human Rights Committee, *Gen. Comment No. 29*, *supra* note 49, at para. 7. [↑](#endnote-ref-61)
62. CAT Committee, *General Comment No. 2: Implementation of article 2 by States parties, (39th Sess., 2007)*, in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, at 377, para. 5, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. II) (2008). *See also* Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, adopted Dec. 10 1984, art. 10, G.A. Res. 39/46, U.N. GAOR, 39th Sess., Supp. No. 51, U.N. Doc. A/39/51 (1984). [↑](#endnote-ref-62)
63. In fact, both IHL and IHRL envision a key role for aid organizations. IHL obligates parties to a conflict and third states to facilitate the passage of humanitarian relief to civilians in need. *See* ICRC, Customary IHL Database, *Rule 55*, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\_rul\_rule55 (last visited May 31, 2017). *See also* CESCR, *Gen. Comment No. 14*, *supra* note 50, para. 65 (recognizing the important role of UN agencies in providing access to basic goods and services in humanitarian settings). [↑](#endnote-ref-63)
64. *See* CEDAW and CRC Committees, *Joint general recommendation, supra* note 22, at paras. 31, 63, 65. [↑](#endnote-ref-64)
65. CRC Committee, *General comment No. 20, supra* note 60, at para. 80. [↑](#endnote-ref-65)
66. *See* UNFPA *The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies*, HRBA Portal (March 2005), http://hrbaportal.org/the-human-rights-based-approach-to-development-cooperation-towards-a-common-understanding-among-un-agencies [hereinafter UNFPA, *The Human Rights Based Approach to Development*]. [↑](#endnote-ref-66)
67. CEDAW Committee, *Gen. Recommendation No. 28*, *supra* note 50, para. 11; CEDAW Committee, *Gen. Recommendation No. 30*, *supra* note 52, at para. 2. [↑](#endnote-ref-67)
68. *Cf.* OHCHR, *Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies*, para. 21, U.N. Doc. HR/PUB/06/12 (2006) (noting, in the poverty reduction context, that an approach based on these principles shifts focus from “narrow economic issues towards a broader strategy that also addresses the socio-cultural and political-legal institutions which sustain the structures of discrimination”); *see also* UNFPA, *The Human Rights-Based Approach*, http://www.unfpa.org/human-rights-based-approach (last visited June 9, 2017). [↑](#endnote-ref-68)
69. *See* UNFPA, *The Human Rights Based Approach to Development*, *supra* note 66; Lena Kähler, Marie Villumsen, Mads Holst Jensen, and Pia Falk Paarup, *AAAQ & Sexual and Reproductive Health and Rights: International Indicators for Availability, Accessibility, Acceptability, and Quality*, The Danish Institute for Human Rights 24-25 (2017), *available at* https://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/nyheder/aaaq-srhr\_issue\_paper\_dihr\_2017\_standard.pdf. [↑](#endnote-ref-69)
70. *See, e.g.*, OHCHR, A Human Rights-Based Approach to Data: Leaving No One Behind in the 2030 Development Agenda 6-7 (Feb. 19, 2016), http://www.ohchr.org/Documents/Issues/HRIndicators/GuidanceNoteonApproachtoData.pdf; University of Essex Human Rights Centre Clinic & the European Roma Rights Centre, Disaggregated Data and Human Rights: Law, Policy and Practice 7 (Oct. 2013), *available at* https://www.essex.ac.uk/hrc/careers/clinic/documents/disaggregated-data-and-human-rights-law-policy-and-practice.pdf; *see also* CESCR, *Gen. Comment No. 22*, *supra* note 37, para. 15 (noting that “health facilities, goods, information and services related to sexual and reproductive health care should be accessible to all individuals and groups without discrimination and free from barriers”). [↑](#endnote-ref-70)
71. *See* CRC Committee, *General comment No. 20, supra* note 60, at paras. 79-80. [↑](#endnote-ref-71)
72. *See* UNFPA, *The Human Rights Based Approach to Development*, *supra* note 66. [↑](#endnote-ref-72)
73. *See generally* United Nations General Assembly Res. 60/147, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, A/RES/60/147 (21 March 2006). [↑](#endnote-ref-73)
74. *Id.*, para. 3(b). [↑](#endnote-ref-74)
75. Restitution aims to restore the victim to her original situation before the violation and includes restoration of enjoyment of human rights, return to one’s place of residence, or return of property. Compensation is required as appropriate and proportional to the gravity of the violation and the circumstances of each case. Rehabilitation includes medical and psychological care as well as legal and social services. Satisfaction aims to ensure the cessation of continuing violations and includes verification and public disclosure of facts. Guarantees of non-repetition aim to prevent future violations and include structural and systemic changes, such as legal reform and education. *Id.* paras. 19-23. *See also* Human Rights Committee, *Gen. Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, para. 16, U.N. CCPR/C/21/Rev.1/Add. 1326 (2004); CAT Committee, *General Comment No. 3: Implementation of article 14 by States parties*, para. 2, U.N. Doc. CAT/C/GC/3 (2012); CEDAW Committee, *General Recommendation No. 33 on women’s access to justice*, para. 19(f), U.N. Doc. CEDAW/C/GC/33 (2015). [↑](#endnote-ref-75)
76. CEDAW Committee, *Gen. Recommendation No. 30*, *supra* note 52, at para. 51. [↑](#endnote-ref-76)
77. *Id.* para. 52(c).

    

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