

WOMEN IN GAZA

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INTRODUCTION

“A suffering I wouldn’t wish upon any woman” – these are the words of Nada Abdelsalam, 34, a Palestinian woman describing her situation in Deir el-Balah in the Gaza Strip, as she is interviewed by Al Jazeera (Humaid, 2024). Nada’s words perfectly set the tone of the present report, which aims to shed light on the situation of Palestinian women in Gaza. More specifically, the report covers the different types of gender-based violence (GBV) that the women of Gaza face (Chapter 1), the most pressing challenges related to their health, including their sexual and reproductive health (Chapter 2) and, finally, how all of it fits into the framework of the law of war, or International Humanitarian Law (IHL) (Chapter 3).

It is important to note that the situation in Gaza is not solely a by-product of the violent attacks perpetrated by Hamas on October 7th, but rather of a continuing and ever-worsening process of illegal occupation and systematic dispossession that dates back to long before 1948 and the creation of the state of Israel, and which led to the first *Nakba*.¹Indeed, there have been many violent flare-ups of the conflict since 1948 with the one on the 7th of October killing hundreds of Israeli citizens.²Israel immediately retaliated and, more than seven months later, the Gaza Strip is still besieged with genocidal violence. The consequences have been beyond disastrous for the population of Gaza, and most of all, its women and children, who have been disproportionately impacted.

About 70 percent of civilians killed since October 2023 have been women and children, and every day, an estimated 37 mothers are left dead, more often than not leaving behind young children (OHCHR, 2024b). Those that manage to survive too suffer tremendously. “Women in Gaza have borne the brunt of this war. Our burdens have multiplied, and our sense of privacy has vanished”, further explains Nada to Al Jazeera (Humaid, 2024). This war has taken a huge toll on the Palestinian women and its impact on their lives can be observed on numerous levels, which will be explored in the following chapters.

Firstly, as this report focuses exclusively on the women in Gaza, it is not a comprehensive account of the situation of Palestinian women as a whole, which would require an analysis of the West Bank as well. Secondly, this report does not claim to provide an exhaustive analysis of all factors relevant to the situation of the women living in the Gaza Strip. Rather, the aim is to shed light on different dimensions that constitute pressing struggles at the moment, and how these fit into the framework of IHL. Thirdly, it is necessary

¹ The Nakba, which translates from Arabic to English as ‘the catastrophe’, refers to the violent persecution and

displacement of 750.000 Palestinians after the unilateral declaration of independence by the State of Israel in 1948.

² The attack on the 7th of October, 2023, and the multiplicity of other violent acts and violations of International Humanitarian Law committed by Hamas against the Jewish population in the state of Israel deserve a separate analysis and outside the scope of this report, as a result of the focus on Palestinian women in Gaza.

to highlight the evolving nature of the situation on the ground as the violence continues to unfold unabated. As such, any descriptions, facts, and figures included in the report are by no means static. That being said, efforts were made to integrate the most up-to-date information available. However, the full extent of the damage done will only be revealed as time passes, when active hostilities are over and the dust settles.

The extent to which the state of Israel seals off access to the Gaza Strip, for humanitarian workers as well as foreign news reporters alike, further limits the possibilities for the rest of the world to get a grip on what is truly going on in Gaza. This means that it is challenging to independently verify information and numbers. However, Palestinian reporters on the ground and the rest of the Gazan population have been making exceptional efforts to report on and broadcast as much as possible through social media channels - all while having to endure the hardships of living in the midst of a raging warzone.

1. GENDER-BASED VIOLENCE (GBV)

The women and girls of Gaza have been living in difficult circumstances for many decades, facing myriad forms of gender-based violence (GBV). According to Article 3 of the Istanbul Convention (2011), GBV refers to violence directed against a woman because she is a woman, or violence that disproportionately affects women. Ranging from assaults on women journalists, arbitrary detentions and executions, to sexual and intimate-partner violence, the challenges for Palestinian women are multifold while there are little to no safe spaces left (UN Women, 2024).

After Hamas' attack on October 7th, 2023, Israel launched a newfound war on Gaza that has exacerbated many of the vulnerabilities that were already a reality, in addition to creating acute new dangers. In an attempt to map out the complexities of GBV in Gaza, this chapter will touch upon the different forms of GBV as well as the impact thereof on the wellbeing of Gazan women and girls, as well as on the overall social fabric of communities in Gaza.

1.1 DIFFERENT TYPES OF GBV AGAINST WOMEN IN GAZA

1.1.1 Sexual Violence

Sexual violence against women during wartime or in areas in crisis is so common that the existence of sexual violence is often seen as an inevitable side effect of conflict and crisis (Brownmiller, 1975). Sexual violence is an effective weapon of war to obtain strategic objectives and to demoralise and subjugate the enemy. Knowing this, it is perhaps somewhat surprising that there have been few reports of sexual violence against the population of Gaza

in comparison to many other protracted conflicts (Lamb, 2020). The violations against women's reproductive rights, however, paint a different picture (Shahd, 2004).

In the most recent violent surge of the conflict, experts have noted a more permissive attitude in allowing and normalising sexual violence against Palestinian women (Borger, 2024). Both witness statements and expert investigations have confirmed that Palestinian women and girls in detention are subjected to different forms of sexual assault. This includes rape, threats thereof, invasive searches and forced nudity for an extended period of time (Borger, 2024; Hearst, 2024; OHCHR, 2024b; UN News, 2024). The full extent of this violence will probably never be known, since wartime sexual violence is often shrouded in silence (Lamb, 2020).

Questions have been raised before on the Israeli military's ideology about wartime rape. In 2016, the appointment of Mr. Eyal Karim as Chief Rabbi of the Israeli military forces sparked controversy as a result of some comments made by Mr. Karim in 2002. The rabbi stated that in the interest of soldiers' morale, it was permitted to "satisfy the evil inclination by lying with attractive [non-Jewish] women against their will" (Reuters, 2016) and that "since the success of the whole at war is our goal, the Torah permitted the individual to satisfy the evil urge for the purpose of the success of the whole" (Beaumont, 2016). Mr. Karim has since claimed that he spoke in the past tense and does not approve of wartime rape under any circumstance.

1.1.2 Intra-familial Hardships and Violence

The overall stress and grief of the entire population in a warzone have far-reaching effects on family life (UN Women, 2024). These overwhelmingly negative sentiments are often taken out on the women in the family, further compounding the challenges the Palestinian women are already facing. This takes various forms, ranging from emotional abuse to physical intimate partner violence. In combination with the lack of gender-related protection, women are in a vulnerable position (UN Women, 2024).

The responsibility of providing care for the family generally falls upon women. In a situation where many women are widowed and lose a breadwinner, this gradually becomes more and more difficult (UN Women, 2024). If family members are physically unable to flee a high-risk area, it is often women who stay behind to care for the family members in question, jeopardising their own safety (UN Women, 2024). It has also been reported that 80 percent of women in Gaza eat only half of what they did before the war, or less. Additionally, they eat last and least of everyone else in the family, while still bearing the brunt of overall caring duties (Khalkhali, 2024).

Relatedly, these circumstances also lead to an increase in early marriages. In the context of schools being destroyed, and thereby also children's educational opportunities, the

loss of one or both parents, as well as overall shortages of essential basic living supplies, families oftentimes see no alternative for reducing their economic burden than to have their daughters marry young (Girls Not Brides, n.d.; UN Women, 2024). The impact this has on the lives of girls and young women cannot be underestimated, as it blurs the boundaries between childhood and womanhood in a way that is illegal in itself. Furthermore, forced early marriages often turn abusive and have a very negative impact on the wellbeing of the girls and young women involved (UNFPA, 2016).

1.1.3 Arbitrary Detentions and Executions

Since the war on Gaza flared up violently again in October 2023, there have been reports of hundreds of arbitrary detentions and executions of Gazan women and girls (Hearst, 2024; OHCHR, 2024a). The deliberate targeting and extrajudicial killing of Gazan women often occurs as they are fleeing or in places where they were seeking safety, and it has left many children orphaned. These arbitrary detentions and executions by the Israeli forces are violations against the protection of civilians under international humanitarian law (IHL), and have been strongly condemned by experts (OHCHR, 2024a).

In the same vein, many of the women that have been detained were fleeing via what was supposedly a safe corridor, or even directly from their homes (Osman, 2023). These practices have resulted in mothers being separated from their (sometimes very young) children, who are then left to their own devices. Additionally, if the detainees are not released after being questioned, it is often unclear where they are being held and whether or not they are imprisoned. Experts have also expressed their concern regarding a number of women and children from Gaza that remain missing after contact with the Israeli army (OHCHR, 2024a).

The Palestinian Authority's (PA) Commission of Detainees and Ex-Detainees Affairs has alerted, jointly with the Palestinian Prisoners' Club, that female detainees are vulnerable and fall victim to "horrific crimes" (Osman, 2023). Eyewitness accounts from other former prisoners describe brutal treatment, including rape, threats of sexual violence, beatings, starvation and dehydration policies, verbal abuse, forceful removal of hijabs, and even deliberate attacks by police dogs (Borger, 2024; Hearst, 2024; Shalash, 2023; Osman, 2023; UN Women, 2024). In addition, the detainees from Gaza are generally forbidden to see their lawyers, families, and even other prisoners (Shalash, 2023; Osman, 2023).

1.1.4 Violence against Female Journalists

It has been extremely difficult for international journalists to report directly from Gaza, as Israel has limited access to Gaza through the main Erez crossing (Free Press Unlimited, 2023). As a result, the reporters on the ground are mostly Palestinian journalists. The hampering of media coverage undermines accurate documentation of the humanitarian

situation on the ground as well as potential violations against IHL. Even though journalists are protected as civilians under IHL, the Israeli Defense Forces (IDF) has asserted from the beginning of its military operations that it would not be able to guarantee the safety of journalists operating in the Gaza strip, because Hamas intentionally stations its operations near civilians and journalists (Reuters, 2023).

The current circumstances in Gaza make for a very high-risk environment for reporters, as the territory has been actively under siege for many months on end. According to the most conservative assessments, nearly seven months of intense warfare in Gaza have left at least a hundred Palestinian journalists dead in Israeli attacks, making the war on Gaza the deadliest ever for journalists (Committee to Protect Journalists, 2024). Other sources estimate the number of journalists killed to be between 120 and 150 since October 2023. At least another four reporters are still missing, in addition to sixteen journalists that have been reported to be injured (Committee to Protect Journalists, 2024). Even if they manage to stay safe despite continuous airstrikes and ground assaults, their job has become extremely challenging due to power outages, disruptions in communication, and supply shortages (Mandour, 2024).

Women journalists in Gaza face additional challenges. Though their contributions to the Palestinian media landscape have been invaluable, they are subjected to harassment, intimidation, cyberattacks and even physical assault (Bashir, 2024; Mandour, 2024). Additionally, the difficulties of moving around in a warzone have curtailed women journalists severely in, for instance, seeing their children and practicing motherhood as they should be able to (Bashir, 2024). According to Women in Journalism, an advocacy group, there have also been several accounts of journalists' and their families being directly threatened in an attempt to obstruct their work (Mandour, 2024).

1.2 CONCLUSION: MASSIVE IMPACT REQUIRES COMPREHENSIVE APPROACH

As demonstrated by the variety of areas in which women and girls are negatively and disproportionately affected, it is clear that the impact of GBV in Gaza is massive and should be considered on different levels. On an individual level, the gendered dimensions further complicate the living situation of women and girls, who were already weighed down by the reality of living in an occupied territory that has now come under attack again. This results in extreme physical and psychological suffering.

Access to GBV-linked services has also been severely limited due to structural damage, overall lack of resources, and unsafe surroundings, which, in turn, has further exacerbated the situation for many women and girls. The only two women's centres in Gaza have been destroyed and there are no safe spaces to flee to (UN Women, 2024). Also, the

remote provision of gender-based services is severely undermined by the constant electricity and telecommunication blackouts (UN Women, 2024).

Ultimately, the suffering of Gazan women and girls goes beyond individual experiences, as there is an enormous impact on communities as well. The wide-ranging impact on overall physical and psychological well-being, on motherhood and on traditional support structures, undermines the social fabric throughout Gaza. It erodes everything that holds a society together, at a time when resilience is of paramount importance.

2. WOMEN'S HEALTH: A SEXUAL AND REPRODUCTIVE HEALTH RIGHTS CRISIS (SRHR)

As has already been established in the previous chapter, the human cost of war spreads far beyond the battlefield and the long-term implications for civilians, in particular women, are often forgotten. This chapter considers the multifaceted impact of war on the health of Palestinian women, aiming to reveal how the ongoing conflict is affecting access to primary services, exacerbating mental health problems, and severely compromising sexual and reproductive health and rights (SRHR). Through a close examination, insights can be gained into the depth of the crisis, which will also help identify strategies to foster resilience and advocate for a better future for Palestinian women.

During the period from October 2023 to May 2024, the OCHA reports estimated a minimum of 34,500 Palestinians to have been killed and 77,700 injured in the conflict in Gaza. It further states that, by April 23rd, 2024, more than 14,600 children and 9,600 women lost their lives in the conflict zone. With no clear sign of an immediate resolution to the conflict, these statistics remain in constant evolution. Restricted access to health facilities, hygiene supplies, safe spaces, and education leaves women and girls exposed to risks such as maternal and newborn mortality, sexually transmitted infections, and diseases associated with poor hygiene and water shortages, which in turn influence women's reproductive choices (ACAPS, 2024). With the support of organisations such as the International Rescue Committee (IRC), UNFPA, and multiple others that push for an urgent ceasefire in the region to protect and provide humanitarian aid to the women and children in Gaza, Palestinian women remain resourceful and resilient.

2.1 IMPLICATIONS FOR PREGNANT WOMEN

Based on data from the Gaza Media Office and from the UN Population Fund, UN Women estimates approximately 155,000 women in Gaza are reportedly pregnant or breastfeeding (UN Women, April 2024). As the conflict brings exacerbated health risks, pregnant women and new mothers with their newborn babies are facing severe shortages of

food, water, and medical care, resulting in newborns suffering from dangerously low birth weights due to a lack of nutrition, clean water, and neonatal healthcare.

Prior to the outbreak of the conflict, there were already high levels of malnutrition among pregnant women, impacting both childhood survival and growth. Within a few months, the UNFPA's April situation report estimated that nearly 15,000 pregnant women are fighting famine in the region, and there have been significant rates of malnutrition among children (UNFPA, 2024). Following October 2023, many doctors and health organisations reported a high number of miscarriages in Gaza while declaring an urgent call for help. According to the World Health Organization (WHO), it is estimated that there are 50,000 pregnant women in Gaza, with over 180 giving birth per day. Of these women, it is likely that 15 percent will encounter complications relating to pregnancy or childbirth and will require further medical care. However, these women are unable to receive the emergency obstetric services necessary to give birth in a safe environment and to care for their newborn babies. Discharging women shortly after birth and performing caesarean sections have become more common as a result of fear and uncertainty. Additionally, premature births as well as low children's weight at birth have increased due to various factors, including stress, preterm labour, or malnutrition (UNFPA, 2024). Lack of sufficient antenatal care raises the risk for both mothers and babies, potentially exposing them to infectious diseases and raising the possibility of severe complications. Moreover, massive damages to health infrastructure significantly undermine postnatal care and elevate the risk of severe postnatal infections. The access of women to essential health services is severely restricted by the blockade and damage to medical facilities, complicating the treatment of reproductive health problems, whether acute or chronic. In addition, the continuous stress of living in a conflict zone adds to stress-related reproductive issues, such as menstrual irregularities and the intensification of menopausal symptoms (Bond, 2024; Observer, 2024).

Moreover, health services for maternal, newborn, and child health are seriously affected by shelling, damaged or inoperable health facilities, displacement, collapsed water and electricity supplies, and limited availability of food and medicines. For instance, the UNRWA initial evaluations indicate that 4600 displaced pregnant women and approximately 380 newborns living in UNRWA facilities need medical care. Already, over 22,500 cases of acute respiratory infections have been reported alongside 12,000 cases of diarrhea, as a result of the high levels of poor nutrition (WHO, 2023). With deteriorating access to both food and water, mothers are struggling to feed and care for their families, which increases the risks of poor nutrition, morbidity, and mortality (WHO, 2023).

2.2 INACCESSIBILITY OF FEMININE HYGIENE PRODUCTS

Over a million women and girls in Gaza have hardly any access to food, clean water, toilets, or sanitary pads, and are suffering from rising diseases in the midst of dire living conditions (UN Women, 2024b). More specifically, the United Nations reports that approximately 700,000 women and girls suffer from inadequate access to elemental hygiene products during their menstrual periods, such as pads, toilet paper, or water, due to the shortages caused by the war. These devastating conditions render them vulnerable to certain reproductive and urinary infections (NPR, 2024). There is a serious scarcity of water and medical care in shelters in Gaza, causing an increase in illnesses, including influenza, chest infections, skin conditions, and diarrheal diseases. In addition to that, women and girls are affected by menstrual irregularities, while cases of sexually transmitted infections and urinary tract infections are on the rise.

Many menstruating women and girls cannot access sanitary products, most have to use tent leftovers, while others miss their periods completely as a result of stress. Often, women take norethisterone tablets, which are recommended for conditions such as excessive menstrual bleeding, endometriosis, and painful periods. One of the health workers at Palestine Family Planning and Protection Association denounced the lack of menstrual pads, which leaves women to use cloth pieces and plastic bags to avoid leakage on their clothes (ReliefWeb, 2024). As WHO guidelines show, women during their menstrual period require at least 20 sanitary pads daily; however, under wartime conditions, it is extremely difficult to access any sanitary pads or, if available, they are sold at high prices (CGTN, 2024).

Officials from organisations including ActionAid and Wefaq Association for Women and Childcare (WEFAQ) continue to help women and girls in the region under severe circumstances by providing hygiene kits and constructing toilet and shower installations to offer them more privacy. However, the lack of water stands as a serious concern for feminine hygiene during wartime where they are unable to reach any products or substitutes aggravating their health risks. UNOCHA reported only one-third of the water pipelines in the Gaza Strip to be operational, which covers only a limited amount of the water needed for sanitation or washing while the actual daily amount must be at least 15 litres (ActionAid, 2024).

2.3 SEXUAL AND REPRODUCTIVE HEALTH RISKS

While sexual and reproductive rights are the cornerstone of women's health and empowerment, under harsh wartime conditions, these rights are severely compromised. There have always been widespread concerns regarding the control and abuse of sexual and reproductive rights of women and girls in occupied Palestine. The United Nations Population Fund (UNFPA) reported the absence of sexual and reproductive healthcare access for nearly 94,000 women and girls prior to October, which has risen to over one million in less than five months (ReliefWeb, 2024). Due to the primary focus of healthcare assistance on physical injuries, sexual and reproductive health (SRH) necessities of women and girls in the region

have been neglected even more. Negative impacts on women's sexual and reproductive health (SRH), particularly maternal and newborn health, can have medium and long-term implications beyond immediate trauma and mental health needs (ACAPS, 2024).

Commonly perceived as sensitive matters, gender-based violence and sexually-transmitted infections (STDs), particularly HIV, have often been both stigmatised and overlooked in early humanitarian responses which may also result in a lack of STI testing and laboratory services, creating long-term sexual and reproductive health risks for both women and men. The stigmatisation that surrounds these experiences creates an obstacle to reaching out for help, leaving women with enduring physical and psychological traumas (ACAPS, 2024). Addressing these challenges requires an integrated response including international support, improved health care delivery, and removal of social barriers that impede women's access to health care. Furthermore, the psychological costs of conflict also have direct and oftentimes devastating effects on reproductive health, including higher instances of stress-induced miscarriages, stillbirths, and premature births (WHO, 2023). Limited access to safe contraception and abortion facilities results in an increasing number of unwanted pregnancies and unsafe abortions (UNFPA, 2024). Moreover, access to contraceptives is highly constrained. Often women have to resort to exchanging contraceptive pills, and even those with intrauterine devices (IUDs) are suffering from infection and bleeding as a result of unsanitary circumstances, while no facilities are present to remove the IUD, risking long term reproductive health issues (IPPF, 2023).

2.4 MENTAL HEALTH CHALLENGES

According to the report published by the World Health Organisations Director-General in January 2024, an estimated 452,600 people, equivalent to 22.1 percent of the population, live with mental health disorders in the Gaza Strip including an estimated 104,450 people who suffer from mental health disorders such as schizophrenia, bipolar disorder, severe depression and anxiety. Displacement, shelling, violence, loss of loved ones, homes and livelihoods, combined with limitations, are all factors likely to have further increased mental health risks among this population. However, as the area's sole specialised mental health treatment facility has ceased operations, options for treatment are now highly limited (WHO, 2024). For Palestinian women, the psychological consequences of war are profound. They remain struggling with anxiety, depression, and post-traumatic stress disorder (PTSD). Such mental health problems affect not only their well-being but also their ability to cope with the daily challenges of life in wartime. Aid restrictions, forced displacement, and infrastructure damage are exacerbating the crisis (UNFPA, 2024).

2.5 DISRUPTION OF ACCESS TO HEALTHCARE FACILITIES

Since the most recent outbreak of the conflict, multiple hospitals and clinics have been targeted, medical staff is being forced to operate in dire conditions and infrastructure continues to collapse, resulting in the disruption of access to indispensable health services of the population. For instance, health facilities in Gaza have been relentlessly attacked, with over 400 attacks, mainly air strikes and raids, causing many of the healthcare workers to lose their lives. According to the statistics from the WHO, there are only five hospitals in the north of Gaza that are partially functional and offer limited health care to the vulnerable population, compared to a total of six hospitals in the south. With average patient occupancy estimated at more than two and a half times, hospitals remain overloaded. UNRWA continues to deliver health assistance throughout the Gaza Strip including eight health centres and over 100 medical posts (UNRWA, 2024). From the first day of May, 12 out of the 36 hospitals are reported to be partially operational, compared to 70 percent of primary health centres which are not currently functioning (ACAPS, 2024). Most hospitals are working at restricted capacity and overflowing with patients, struggling with serious shortages of essential supplies such as fuel, medicines, materials, and medical personnel.

Since October 2023, the Israel Defense Forces (IDF) have been targeting these facilities and endangering the security of healthcare workers, including SRH providers. By April 26th, 2024, around 500-700 health workers had lost their lives in Gaza. Surviving personnel, who work under intense pressure and fear, struggle to respond to the needs of the vulnerable population (ACAPS, 2024). The closure of 14 hospitals and 45 primary health centres have left some women with no choice but to give birth in shelters, in their homes, on the streets among the rubble, or in health facilities overwhelmed by worsening health conditions and increased risks of infection and medical complexities (WHO, 2023). The risks are compounded by the fact that 95 percent of pregnant and breastfeeding women do not receive adequate micronutrients (UNFPA, 2024). These limitations significantly limit women's access to life-saving medical services during their ongoing struggle in the region. Furthermore, the lives of an estimated 130 premature babies who depend on neonatal and intensive care services would be under threat if hospitals ran out of fuel since incubators and other medical supplies would no longer operate. Still, 39 percent of hospitals in Gaza are partly operational and almost two-thirds of the fundamental healthcare institutions are closed. Although starting May 1st the Al-Halal Al-Emirati Maternity Hospital in Rafah was the principal medical center delivering health assistance to pregnant women in southern Gaza, its prenatal center located in a displacement camp was incapable of addressing the needs of an estimated 180 women giving birth each day (ACAPS, 2024).

3. WOMEN IN GAZA: A LEGAL PERSPECTIVE

The aftermath of the October 7th attacks and the ongoing Israeli military campaign in the Gaza strip has sparked debates over the applicability of International Humanitarian Law (IHL) in the current hostilities. The subsequent conflict has been the theatre of unprecedented levels of violence against the Palestinian population, of which, women are the prominent

recipient, as outlined in the previous chapters of this report. The large-scale devastation that unfolded, the relentless and incessant attacks on women and girls' dignity, physical integrity and the degrading living conditions **constitute systematic violations of human rights that must be regarded under the prism on IHL as a common framework for upholding human rights** on the one hand, and on the other, for holding states liable and non-state actors accountable for their actions.

The sexual violence against Palestinian women, the violations against their sexual health and reproductive rights, the worsening levels of acute food insecurity, the ever-growing number of Palestinians in need of urgent humanitarian assistance across the occupied Palestinian territories (oPt) as well as the mass displacement of populations are all matters that need to be addressed in light of IHL and constitute potential war crimes and crimes against humanity supplementing allegations of genocide. This chapter will analyse the laws applicable in the current hostilities as well as Israel's non-compliance with IHL. Although its analysis is outside the scope of this report, it is important to note that Hamas, the Palestinian Jihad and other Palestinian armed groups, in their attack on October 7th, as well as in their previous military campaigns, are bound by IHL obligations. This is regardless of their status under IHL as a state or non-state actor, and should thus be held accountable for their clear and repeated violations of the laws of war and particularly of women's rights.

3.1 LEGAL FRAMEWORK: APPLICABLE LAW 3.1.1

Applicability of IHL With Regards to the oPt's Legal Status

The applicability of IHL in Gaza and the occupied Palestinian territories (oPt) is difficult to assess as the ambiguous status of the Palestinian authority complicates categorising the conflict as either an international armed conflict (IAC) or a non-international armed conflict (NIAC). Assessing the framework for applicability of IHL in Gaza and the oPt is nonetheless an important step in holding perpetrators accountable and a crucial part of achieving conflict resolution, as it is legally binding for states and non-state armed groups alike.

The legal status of the oPt was settled by the International Criminal Court in a 2003 advisory opinion addressing the "legal consequences of the construction of a wall in the occupied Palestinian Territory" (ICJ, 2004). **According to the ICJ, "Israeli settlements in the oPt, including East Jerusalem, are illegal and an obstacle to peace"** given that "[...] **under customary international law, all these territories remain occupied territories and Israel has continued to have the status of occupying power**". As per resolutions, 242 (1967), 338 (1973), 1397 (2002), 1515 (2003), 1850 (2008), and 1860 (2009), the UN Security Council (UNSC) has argued that in light of Israel's enduring *de facto* control of Gaza's borders, airspace and electricity, energy and water supplies, as well as in light of the

continuation of a comprehensive air, sea, and land blockade since 2007, Israel remains an occupying power (Lynk, 2023). As such, Israel must ensure the respect of IHL, provide for the oPt's population's basic needs (Baldwin, 2023), and fulfil its obligations under the relevant human rights conventions (OHCHR, 2011). The UN has repeatedly condemned Israel's violation of the principle of territorial integrity, illegitimate use of force, and continued occupation, as it retains effective control over the oPt regardless of its claim of withdrawal of Israeli settlers and military from Gaza in 2005 (UNSC Resolutions 242, 338, 1397, 1515, 1850, 1860). The resolutions further reaffirm the necessity of safeguarding civilian population from harm and consistently call for a ceasefire. These resolutions thereby designate the conflict as falling under the category of an international armed conflict as under Article 2 common to all four Geneva Conventions, the conventions apply "to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance" (IHL Databases, n.d.).

As such, also applicable in the Israel-oPt case are the 1899 and 1907 Hague Conventions, the four Geneva Conventions of 1949, the two Additional Protocols of 1977, the entirety of the international human rights law, international criminal law, as well as customary IHL.

3.1.2 Applicability of IHL with Regards to the Women's Rights Violations

When referring to violations of women's rights, customary law 83 states that rape or any other form of sexual violence is illicit with regards to IHL in international armed conflict and non-international armed conflict indistinctively (ICRC, 2005). UNSC resolutions 52/86 (1998) pertaining to "crime prevention and criminal justice measures to eliminate violence against women", 1325 (2000), and 1820 (2008) regarding women and children's rights in times of armed conflict further provide the applicable legal framework outlining state and non-state parties' obligations in terms of upholding and safeguarding women's rights in times of conflict or peace. The 1993 Declaration on the Elimination of Violence against women (DEVAW) recognises women's rights violations as human rights violations and general recommendation 19 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979) argues that "the *opinio juris* and State practice suggest that the prohibition of gender-based violence against women has evolved into a principle of customary international law" (CEDAW, Recommendation n°35). Dispositions regarding the obligation of states to investigate, punish, and ensure redress for sexual and gender-based violations of IHL in armed conflicts also exist in the four Geneva Conventions and the two Additional Protocols:

- Art. 27, Common Article 3
- Protocol I Article 75(2)(a); (b), Article 76
- Protocol II Article 4(2)(a);(e)

- Statute of the International Criminal Court (ICC) (Article 7(1), Articles 8 (2.b; 2.c; 2.e))

Hence, gender-based and sexual violence in times of conflict can be regarded as war crimes, crimes against humanity, and acts of genocide, torture, inhuman and degrading treatment or discrimination and enjoy the status of *jus cogens* or peremptory norm. As such, they are **enforceable at all times and trigger individual and state liability before international jurisdictions.**

3.2 ALLEGATIONS OF VIOLATIONS OF IHL

Alleged violations of IHL committed by the State of Israel in the Gaza Strip are numerous. There are reasonable grounds to believe that the core principles of proportionality, distinction, and precaution have reportedly been violated at every stage of the planned military operation. Furthermore, the situation is swiftly worsening due to Israel's disregard and lack of response to the ICJ's ruling mandating the implementation of six provisional measures (ICJ, 2024).

3.2.1 On Allegations of War Crimes and Crimes Against Humanity

The United Nations and prominent NGOs have repeatedly condemned the use of unlawful military tactics. According to the International Committee of the Red Cross (hereinafter ICRC), the Statute of the ICC, and customary law (Rule 156), war crimes are defined as “serious violations of the laws and customs applicable in international armed conflict and in an armed conflict not of an international character” (IHL Databases, n.d). Indeed, Article 33 of Geneva Convention IV and Article 75(2)(d) of the Additional Protocol I (IHL Databases, n.d) preclude the use of collective punishment. The use of starvation (rule 53 customary law; Article 82(b) Rome Statute), total blockade or mass displacement as military tactics are strictly prohibited and can amount to violations of IHL and war crimes, and crimes against humanity due to the scale, organisation, and planification level of the attacks against the Palestinian civilian population.

Israel's indiscriminate and disproportionate attacks, the targeting of densely populated areas, schools, hospitals, humanitarian workers, journalists, and refugee camps stands in clear breach of the proportionality and distinction principles. Israel's violation of Article 44 of customary IHL, outlining its obligation to allow safe passage for humanitarian aid and protect civilian populations, represents further disregard for IHL guiding principles.

3.2.3 On Allegations of Genocide

A couple months after Israel's retaliatory attack, South Africa filed an application instituting Proceedings³ at the ICJ against Israel's alleged violation of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter Genocide Convention) in Gaza. The Convention defines genocide as "acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group" (Article 2). In the *South Africa v. Israel* case, the ICJ issued a decision on January 24th, ordering Israel to take provisional measures to prevent the crime of genocide against the Palestinian population. In its order, the Court expressed its deep concern about "the extent of the human tragedy that is unfolding in the region and (...) about the continuing loss of life and human suffering" (§13). It further stated that:

"In the Court's view, the facts and circumstances mentioned above are sufficient to conclude that at least some of the rights claimed by South Africa and for which it is seeking protection are plausible. This is the case with respect to the right of the Palestinians in Gaza to be protected from acts of genocide and related prohibited acts identified in Article III, and the right of South Africa to seek Israel's compliance with the latter's obligations under the Convention." (§54)

In other words, the ICJ considers that there is an urgent, real, and imminent risk of irreparable prejudice and thereby indicates obligatory provisional measures to be taken by the State of Israel. The Court's order does not amount to accusing Israel of perpetrating a genocide or to a decision on the merits of the case, but instead constitutes the first step of a long judicial process. Yet, it still carries significance in that it recognises the plausibility of such allegations and sets the stage for further investigation and Court decisions. However, the order fell short of calling on Israel to implement an immediate cease-fire, perceived by many as a *sine qua non* condition for the improvement of the disastrous humanitarian conditions in the Gaza strip.

Furthermore, in the Jean-Paul Akayesu case (*Prosecutor v. Akayesu*), the International Criminal Tribunal on Rwanda (ICTR) set an important precedent for the enforcement of the Genocide Convention and for the recognition of rape and sexual violence as a method to carry out genocide. It informs the allegations made in the oPt as the ICTR stated that "subjecting a group of people to a subsistence diet, systematic expulsion from homes and the reduction of essential medical services below minimum requirement" (§c(2)) are elements potentially constituent of bringing about the physical destruction, in whole or in part, of a group. It further named "measures intended to prevent births within the group", "rape and acts of sexual violence (...) and sexual abuse, such as forced nudity" (§d(1),(2)) as grounds to find Jean-Paul Akayesu guilty of war crimes, crimes against humanity, and genocide .

³To read South Africa's complete application see the following document:

3.2.4 On Sexual Violence: A Sexual Health and Reproductive Rights Crisis

The consequences of the indiscriminate bombing and ongoing health crisis has done irreversible damage to women's sexual health and reproductive rights (SHRR) and will greatly impact future generations. The aforementioned conditions under which women are obligated to give birth, the destruction of all health and medical facilities, the critical shortages of clean water and electricity alongside the disproportionate mortality rate of mothers, newborns, and children alike are all serious offences to women's SHRR (UN Women, 2024). In the same way, women suffer a heavy psychological toll of hostilities, and a severe lack of menstrual hygiene, triggering infections due to unsanitary living conditions as has been detailed in the previous chapters. This constitutes reasonable basis to believe that Israel's inhumane and degrading treatment of women in Gaza violates its obligations under IHL to safeguard vulnerable groups and all civilians including and giving precedence to women and children.

South Africa's recent application to the ICJ stresses the threat of intentional "acts of reproductive harm" and "reproductive violence" which allegedly constitute a violation of Article 2(d) of the Genocide Convention by enacting "measures intended to prevent births within the group with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group" (§78). The ICJ included the prevention of such acts in its order for provisional measures of January 26th, 2024, with the aim of safeguarding the reproductive capacity of the group. It is a matter of ensuring reproductive justice and the right to bodily autonomy, of which the women in Gaza have been deprived (Santillana, 2024). The lack of freedom of movement, fear of daily violence from settlers and Israeli military, patriarchal norms within the Palestinian society, the blockade of first necessity products and energy, are all factors that greatly undermine and threaten women's rights regardless of the state of current hostilities.

Later reports by the Special Rapporteur on the situation of human rights in the oPt express serious concern over the proliferation of testimonies and proof of sexual assault, forced nudity, alleged cases of rape and threat of rape, and sexual violence and degrading treatments of female prisoners (OHCHR, 2024). Already prior to the October 7th attack, the UN Economic and Social Council (ECOSOC) called out Israel for its violation of women's rights with a resolution on the "Situation of and assistance to Palestinian women" (UNESCO, 2023). Adopted at 37 votes against 6, Israel was accused of constituting a "major obstacle" for Palestinian women "with regard to the fulfilment of their rights, and their advancement, self-reliance and integration in the development of their society" (UN Watch, 2023). The ECOSOC further stated that women are overwhelmingly impacted by the "continuing systematic violation of the human rights of the Palestinian people by Israel, the occupying Power." That is not to say that Palestinian women's only source of oppression lies within Israel's behaviour, but rather that the state's relentless violations of human rights and complete disregard for IHL have a disproportionate and detrimental effect on women and girls.

3.3 RESPONSIBILITY: HOLDING ACTORS ACCOUNTABLE

The aforementioned acts are likely to constitute grave violations of IHL and amount to severe crimes under international criminal law and, as such, the State of Israel can be prosecuted for failing to meet its obligations under international law. Israel's incapacity to prevent, to protect, to guarantee an unobstructed access to internal and international justice, to repress, investigate and pursue perpetrators of violence and violations of IHL, is a flagrant offence that should not go unpunished.

3.3.1 State Responsibility

According to customary international law, Article 3 of the Hague Convention IV (1907), reiterated in Article 91 of Additional Protocol I, states are responsible for "all acts committed by persons forming part of its armed forces" (IHL Database, n.d). This constitutes a specific application of the general rule according to which states are responsible for "the conduct of its organs or agents", "even if it exceeds its authority or contravenes instructions" in accordance with Article 4 and 7 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts (2001). As such, the violations of IHL, infringements of women's rights, reports of sexual and gender-based violence committed by the Tsahal, as the recognised Israeli Defence Forces (IDF) operating under direct instructions from the Israeli State, with a defined chain of command and high organisational level, are imputable to the State of Israel. It thereby has the responsibility to lead impartial and independent investigations, to take measures to stop all activities constituting violations and to uphold accountability for the perpetrators' actions.

However, the prospect of holding trials for Israeli commanders, officials, and politicians is greatly hindered by both Israel and the US' attempts to coerce and influence the process as well as their use of diverse procedural manoeuvres to delay any Court decision. In 2021, an investigation was opened by the ICC to account for possible crimes committed from 2014 onwards. However, although the Rome Statute was ratified by the State of Palestine in 2015, Israel has not yet signed it, nor has the US, which disputes the ICC's competency (UN News, November 2023). Israel has repeated its efforts to prevent any discussion on the substance of Palestinian claims on the ground that according to the State, the ICC does not have jurisdiction over Israel and its citizens (Kuttab, 2023).

As the ICC's competency on the matter is well established, as its jurisdiction extends to crimes committed on the territory of a state party, its ability to address the issue at hand in the case of Palestine is a crucial credibility test. Indeed, the polarisation of debates and the heavy political significance of the case induces a certain reluctance from international jurisdictions to take a strong enough stance, hence putting under scrutiny the impartiality of international mechanisms and their ability to maintain accountability.

3.3.2 Individual Responsibility

As they can amount to international crimes, these violations of IHL and human rights law further give rise to individual criminal responsibility. The ICC is reportedly considering issuing arrest warrants for prominent Israeli officials among which are Israeli Prime Minister Benjamin Netanyahu, Defence Minister Yoav Gallant and Chief of Staff Herzi Halevi (Euronews, 2024). The Prime Minister's defensive reaction illustrates a growing concern among Israeli ranks of potential legal sanctions taken by the ICC. Such a warrant would severely degrade Israel's relationship with its EU partners as they would fall under the obligations of arresting recipients of the warrants, should they set foot on any of the member state's territory. Support from EU countries is of utmost importance as after their unconditional support for the arrest warrant issued against Vladimir Putin, any hint at double standards would further jeopardise the credibility of the international legal order.

The main allegations seem to be related to the use of starvation as a war strategy which seems to be easier than other allegations to trace back to the highest points of the chain of command. However, the ICC's more specific alleged charges are still unknown (Al-Jazeera, 2024). Although the ICC has confirmed the issuing of arrest warrants, it would constitute an important first step in attaining justice in the Palestinian case. Matters related to gender-based violence and SRHR, on the other hand, are likely to take a lot longer and be much more difficult to both investigate and prosecute.

3.4 CONCLUSION

The lack of on-ground fact-finding missions, of humanitarian aid workers, and even journalists makes it particularly hard to gather evidence informing allegations of war crimes, crimes against humanity or genocide. Any objective assessment of Israel's violations of IHL is subject to its lack of substance and will require time, dedicated investigation missions by relevant entities, and a complete cessation of hostilities in order to prevent any risk of irreparable harm. It is important to acknowledge that any investigations and analysis need to also take into account the situation prior to October 7th in order to shed light on the systematic patterns of curtailing of Palestinian women's bodily autonomy and reproductive rights as an inherent trait of settlers colonialism.

The ongoing conflict is further proof of the acute and urgent need to apply a gender prism in our analysis of humanitarian crises as it constitutes a necessary first step towards holding perpetrators of gender-based violence accountable. The dehumanisation and othering of women is a pattern too often observed in times of conflict with neither Hamas nor the IDF being exceptions to the rule. Although this article has focused on the accountability of Israel, investigations must be carried out in light of a broader commitment to start prosecuting all

perpetrators of international crimes and violations of IHL, including those violations pertaining to women and girls, which are disproportionately neglected.

CONCLUSION

The multiplication of oral testimonies, video footage or appalling reports bears witness to the worsening of the humanitarian crisis in Gaza. This report has attempted to analyse the tip of the iceberg that is the endless suffering of Palestinian women. Israel's relentless attacks on women's bodily autonomy and women's sexual health and reproductive rights is embedded in a wider system of political oppression stemming from the inherent nature of an occupying power. Israel's continued effective control over the Gaza strip has taken many forms, all of which fit into a wider system of oppression, directly impacting women's bodies and minds. Our aim has been to highlight the inner workings of this system grounded in the exploitation and violations of women's bodily freedom. In that sense, any analysis of the Gaza conflict requires a feminist approach and gender-specific framework to address women and girl's specific needs and rights. In sum, the focus of this report has been on the plight of Palestinian women, whose suffering is emblematic of the broader systemic oppression perpetuated by Israel's occupation of Gaza.

Israel's conduct needs to be analysed in light of IHL in order to hold the State and the IDF accountable for any potential violations of international law. Further in depth investigations must be conducted in order to assess the extent of the damage caused. It is likely to take time as no effective investigation can be conducted while the war is still raging. If Israel is indeed found guilty of violating norms *erga omnes*, meaning core non-derogable human rights values, it thus becomes the rest of the international community's responsibility to hold Israel accountable for its actions. In summary, gender permeates all aspects of humanitarian crises and this report has attempted to illustrate the gendered impact of violence that needs to be addressed. It is crucial to emphasise the international community's collective responsibility to uphold fundamental human rights values regardless of the country in which events occur, religion or ethnicity of its population, and hold accountable those who violate them, thereby advocating for justice and accountability in the face of humanitarian crises like that in Gaza.

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