

Reproductive Violence in Armed Conflict: International Law and the Case of Gaza

By

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A Thesis submitted to the Faculty of Graduate and Postdoctoral Studies of the University of Manitoba in
partial fulfilment of the requirements of the degree of

Master of Human Rights

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Abstract:

This thesis applies reproductive justice to armed conflict and occupation to identify reproductive violence as a legally central, yet often sidelined, pattern of conduct. Reproductive justice rejects accounts of reproductive autonomy grounded only in individual choice. It affirms the right to have children, the right not to have children, and the right to raise children in a safe and healthy environment, rights that depend on material conditions, safety, and structural constraint. Building on this framework, I define reproductive violence as intentional acts or omissions that interfere with bodily and reproductive autonomy and related rights, or that target people because of actual or perceived reproductive capacity, including through coercion and the obstruction or destruction of reproductive and maternal health care and infrastructure. Through analyzing conduct in Gaza since October 7, 2023, I argue that reproductive and maternal health violations engage binding obligations under international humanitarian law and international human rights law, including the law of occupation and duties toward civilian survival, medical care, and essential supplies. My analysis documents reproductive violence through three mutually reinforcing pillars. The first is denial and obstruction of aid, specifically restrictions on essentials needed for safe pregnancy, childbirth, and infant survival. The second is civilian harm, including the destruction of life sustaining infrastructure, with attention to maternity and obstetric services. The third is displacement through repeated evacuation orders that destabilize pregnancy, fracture family life, and erase any safe environment for early life. I then examine these pillars through Article II(d) of the Genocide Convention, which prohibits imposing measures intended to prevent births within a protected group. I argue that, where case law supports an inference of intent, sustained patterns that make pregnancy and early life unsustainable can be analyzed as reproductive destruction within Article II(d). Finally, I treat third state responsibility as integral to accountability. Using Canada as a case study, I assess the duties of prevention and non-assistance through arms export practice, diplomatic positioning, and engagement with legal processes.

Acknowledgements:

I would like to express my gratitude to Dr. Nathan Derejko for his unwavering support as my thesis advisor. This project would not have been possible without his expertise and consistent kindness throughout the process. I am also grateful to Dr. Gillian MacNeil and Dr. Bryan Peeler for their willingness to serve on my thesis committee, and for taking the time to read this thesis with care and attention. This thesis also would not have been possible without the people around me. To my family, thank you for supporting me as I pursued my master's program, and for cheering me on the entire way, especially when the process felt difficult. Thank you as well for sparking my love of learning, and for encouraging curiosity and hard work from the beginning. To my friends, thank you for your patience, encouragement, and presence. In particular, I am grateful to Summer and Riley, who were always there to listen, support me, and be there through both the good moments and the rough ones. Finally, to my partner, Austin, thank you for being beside me every day of this journey. You were always there for me, and I truly could not have done this without you.

Introduction

Reproductive justice emerged from the inadequacy of ‘individual choice’ in explaining how power, inequality, and coercion shape the possibility of having and raising children.¹ The framework insists that reproductive justice is not only a matter of formal legality, but also a question of material conditions and structural constraint.² It affirms three connected rights, the right to have children, the right not to have children, and the right to raise children in a safe and healthy environment.³ Those rights depend on whether the surrounding conditions enable autonomy to be exercised in practice, meaning both access to care, and the broader environment of safety, stability, and basic security, supported by legal and political structures that make that autonomy meaningful.⁴ In contexts marked by discrimination and deprivation, choice can become an abstraction that obscures rather than reveals the sources of harm. Reproductive justice therefore offers a lens for understanding how states and armed actors constrain reproduction through both direct control and the destruction of the conditions that make family life possible.

This thesis applies the rights-based framework of reproductive justice to armed conflict and occupation by identifying a related pattern of harm that is often treated as secondary in international legal analysis. Reproductive violence captures intentional acts or omissions that interfere with bodily and reproductive autonomy and related rights, or that target people because of actual or perceived reproductive capacity, including through coercion and the obstruction or destruction of reproductive and maternal health care and infrastructure.⁵ While international institutions have made important advances in recognizing conflict related sexual violence, the legal and policy architecture that developed around that issue has often sidelined harms that are not reducible to sexual assault but are equally central to reproductive life, including the deliberate obstruction of reproductive and maternal health care, through restrictions on access, attacks on facilities, and the degradation of the systems needed to sustain safe pregnancy and birth. The result is a gap between how reproductive violence is experienced by pregnant people and caregivers, and how accountability is framed in international law.

Gaza illustrates the consequences of this gap. Since October 7, 2023, pregnancy and birth have unfolded amid systemic collapse, where the minimum requirements for safe childbirth are no longer reliably available. My central claim is that the reproductive justice framework shows that these patterns amount to more than background suffering. It clarifies how reproductive and maternal health harms engage binding obligations under international humanitarian law (IHL) and international human rights law (IHRL), and it also clarifies how the destruction of reproductive capacity can intersect with the *Convention on the Prevention and Punishment of the Crime of Genocide*. In particular, I argue that the imposed

¹ Dorothy Roberts, “Reproductive Justice, Not Just Rights” (2015) 62:4 *Dissent* 79 at 79.

² Loretta J Ross, “Reproductive Justice as Intersectional Feminist Activism” (2017) 19:3 *Souls: A Critical Journal of Black Politics, Culture, and Society* 286 at 287.

³ *Ibid* at 292.

⁴ Loretta J Ross & Rickie Solinger, *Reproductive Justice: An Introduction* (Oakland, California: University of California Press, 2017) at 51.

⁵ Ciara Laverty & Dieneke de Vos, “Reproductive Violence as a Category of Analysis: Disentangling the Relationship between ‘the Sexual’ and ‘the Reproductive’ in Transitional Justice” (2021) 15:3 *International Journal of Transitional Justice* 616 at 616.

conditions documented in Gaza can support an analysis under Article II(d) of the Genocide Convention, which prohibits imposing measures intended to prevent births within a protected group, when the evidentiary basis supports the inference of specific intent.

To develop that claim, the thesis first builds the legal architecture of reproductive justice within IHRL. It focuses on four core treaties, the *Convention on the Elimination of All Forms of Discrimination against Women*, the *Convention on the Rights of the Child*, the *International Covenant on Economic, Social and Cultural Rights*, and the *International Covenant on Civil and Political Rights*. These instruments set out both rights and corresponding obligations imperative for safe pregnancy and childbirth, and the viability of life. They require states to secure the baseline conditions that make reproductive autonomy real, including access to maternal care and protection from foreseeable harm. Treaty body interpretation, especially under the right to health, reinforces that autonomy cannot be separated from the social determinants of survival.

The thesis then situates these human rights obligations within the operation of IHL during armed conflict and occupation. It treats Gaza's legal context as defined not only by hostilities but by a continuing occupation, where control over borders, airspace, territorial waters, and essential services shapes and dictates civilian survival. The legal framework of occupation matters because it makes clear that an occupying power bears heightened obligations to sustain civilian life, and it clarifies why the denial of necessities cannot be treated as an ordinary incident of war. Drawing on the 2004 *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* and the 2024 *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* advisory opinions, the thesis proceeds on the basis that IHRL continues to apply alongside humanitarian law in situations of armed conflict, including where a state exercises effective control outside its territory. These bodies of law provide a unified framework for assessing reproductive violence as both a violation of protected civilian life and dignity and a breach of specific duties owed to pregnant people, newborns, and caregivers under occupation.

On that basis, this thesis documents reproductive violence in Gaza through three mutually reinforcing pillars. The first is aid obstruction and denial, specifically, goods and medical supplies that are indispensable for safe pregnancy and survival. The second is civilian harm, including attacks on essential civilian infrastructure, with particular attention to maternity and obstetric services and the targeting or destruction of facilities that make reproduction and infant survival possible. The third is forced displacement, including repeated evacuation orders, which destabilize pregnancy, separate families, and erase any safe environment for early life. The point is not that hardship alone establishes international crimes. The point is that a sustained pattern of imposed conditions can operate as a method of reproductive destruction, and that existing rules in IHL, IHRL, and, where intent is established, the Genocide Convention, provide clear legal tests for identifying violations, attributing responsibility, and triggering accountability duties.

The genocide analysis builds on this foundation by focusing on Article II(d) of the Genocide Convention and the jurisprudence that, while limited, provides interpretive guidance on how "measures intended to prevent births" can be understood and proven.⁶ Rather than treating Article II(d) as confined

⁶ *Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948, 78 UNTS 277 (entered into force 12 January 1951) art II(d).

to overt interventions like sterilization, the chapter asks whether reproductive violence can also operate through imposed conditions that make pregnancy and early life unviable at scale, and what that looks like in practice. It then frames intent as a question of inference drawn from pattern and context, not from any single statement or episode, and assesses whether the measures imposed and maintained in Gaza support the inference of specific intent, including in the period after the ICJ's provisional measures in *South Africa v Israel* placed Israel on formal notice of alleged Article II conduct.

The final contribution of the thesis is to treat third state responsibility as part of the reproductive justice accountability landscape, rather than as an abstract add on. Genocide obligations are duties of prevention, not merely duties of condemnation and consequence after the fact, so third states must act where there is a serious risk of genocide and where they have capacity to influence the situation.⁷ They also have duties of non-assistance and non-recognition in relation to serious breaches of peremptory norms, and duties to ensure respect for IHL under Common Article 1 of the Geneva Conventions.⁸ I develop this analysis through Canada as a case study, since Canada presents itself as a human rights oriented actor and has publicly committed to a feminist foreign policy.⁹ I examine whether Canada's arms export practice, diplomatic messaging, voting behavior in UN bodies, and engagement with legal processes align with the requirements of prevention, non-assistance, and accountability under various bodies of PIL, as well as the law of state responsibility.

By bringing reproductive justice into conversation with IHL, IHRL, and the Genocide Convention, this thesis makes three linked contributions. First, it reframes harms to pregnant people and newborns as core legal concerns, not humanitarian afterthoughts. Second, it shows how the destruction of reproductive capacity can be analyzed as a method of group destruction under Article II(d) where the record supports a sustained pattern of imposed measures and a clear evidentiary basis for intent. Third, it clarifies that accountability does not rest only on perpetrators, it also turns on whether third states comply with their duties of prevention and non-assistance while serious risks are unfolding. The chapters that follow develop these claims by mapping the legal framework, documenting reproductive violence in Gaza, assessing the Article II(d) argument, and evaluating what international responsibility requires of states with the capacity to act.

⁷*Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948, 78 UNTS 277, art I; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)*, Judgment, [2007] ICJ Rep 43 at paras 430-431.

GA Res 56/83, *Responsibility of States for Internationally Wrongful Acts*, UN GAOR, 56th Sess, UN Doc A/RES/56/83 (12 December 2001), annex arts 16, 41(2); *Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, Geneva, 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950) art 1 (Common art 1).

⁹ Global Affairs Canada, "Feminist approach, Innovation and effectiveness guidance", online: *Government of Canada*; Global Affairs Canada, "Canada's Feminist International Assistance Policy", online: *Government of Canada*.

Chapter One - Reproductive Justice in Armed Conflict

1.1 Introduction

The foundations of reproductive justice were born out of the need to move beyond a narrow understanding of women's health centred on the language of "choice" often associated with abortion.¹⁰ This individualist view often brushed over the numerous factors that go into having and raising children. Reproductive justice is a rights-based framework that goes beyond the legal right to abortion or contraception, encompassing the full spectrum of reproductive autonomy.¹¹ It affirms the right to have children, the right not to have children, and the right to raise children in a safe and healthy environment, recognizing how intersecting factors and oppressive structures shape access to reproductive healthcare and freedom.¹² For women, especially those from vulnerable communities, this is not simply a question of choosing whether to have children, but of weighing the full range of conditions necessary to have and raise children in a safe and healthy environment, conditions that governments have often overlooked or dismissed.¹³ To analyze how these dynamics are attacked in conflict, it is useful to name the specific pattern of harm at issue: reproductive violence. Reproductive violence refers to acts or omissions that cause harm by interfering with reproductive autonomy and related rights, or by targeting people because of their actual or perceived reproductive capacity.¹⁴ It encompasses harms that undermine a person's ability to decide if, when, how, and under what circumstances to conceive, continue or end a pregnancy, give birth, and raise children, including through coercion as well as through the obstruction or destruction of access to reproductive and maternal health care and infrastructure.¹⁵

This issue is further reflected in violence targeting bodily autonomy and reproduction during armed conflict, particularly against pregnant people, harms that the United Nations has often left out of Security Council resolutions and enforcement mandates addressing conflict related sexual violence.¹⁶ Much of the global and United Nations attention to gender in conflict has focused on sexual violence, such as rape, which has been used as a tool of dehumanization in genocides like those in Armenia, Bosnia, and Rwanda.¹⁷ While these discussions and the work of scholars and international bodies are crucial for addressing sexual violence, they rarely extend to protecting pregnant women and ensuring access to the resources needed for a healthy pregnancy, childbirth, and child-rearing. Even United Nations Security Council Resolution 1325, hailed as a landmark for women's rights in conflict, emphasizes the prevention

¹⁰ Roberts, "Reproductive Justice, Not Just Rights" at 79.

¹¹ Ross, "Reproductive Justice as Intersectional Feminist Activism" at 287.

¹² *Ibid* at 292.

¹³ Chukwudi Onwuachi-Saunders, Que P Dang & Jedidah Murray, "Reproductive Rights, Reproductive Justice: Redefining Challenges to Create Optimal Health for All Women" (2019) 9:1 *Journal of Healthcare, Science and the Humanities* 19 at 23.

¹⁴ Lavery & de Vos, "Reproductive Violence as a Category of Analysis" at 616.

¹⁵ UN Women, *Documenting Reproductive Violence: Unveiling Opportunities, Challenges, and Legal Pathways for UN Investigative Mechanisms* (Research Paper) (New York: UN Women, September 2024) at 7; Lavery & de Vos, "Reproductive Violence as a Category of Analysis" at 616.

¹⁶ UN Security Council, Resolution 1820 (2008), UN Doc S/RES/1820 (2008).

¹⁷ Helen Fein, "Genocide and Gender: The Uses of Women and Group Destiny" (1999) 1:1 *Journal of Genocide Research* 43 at 58.

and prosecution of sexual violence but does not explicitly address the unique vulnerabilities or rights of pregnant women.¹⁸ Bridging this gap is necessary for understanding how reproductive rights are violated during conflict, and for defining the scope and content of obligations on duty bearers under IHL and IHRL, including how states and parties to the conflict must prevent interference, protect against violence, and secure access to essential reproductive and maternal health care.

This thesis uses reproductive justice as a legal lens for identifying and evaluating reproductive violence in Gaza, and for clarifying how accountability can be pursued within the contemporary architecture of international law. Drawing on IHRL and IHL, including the law of occupation, it identifies the relevant duty bearers, specifies the content of their obligations toward those who are pregnant and those raising children, and assesses how the conduct in Gaza measures against those standards. That analysis serves two purposes. It maps violations in a way that is legally legible within IHRL and IHL, and it also clarifies how patterns of deprivation, displacement, and civilian harm engage accountability pathways under international law, including, where the evidentiary threshold is met, genocide related obligations concerning measures intended to prevent births within a group.

1.2 What is Reproductive Justice?

Before 1994, the reproductive health movement largely centered on pro-choice advocacy focused on expanding access to birth control and abortion.¹⁹ However, this framing of reproductive activism often reflected the experiences and priorities of middle-class white women, privileging the concept of ‘choice’ while overlooking the realities faced by marginalized communities.²⁰ For many women, particularly those from groups historically subjected to forced sterilization or systemic barriers to maternal healthcare, the right to have children has also been contested and constrained.²¹

In the 1980s and 1990s, the international development agenda began to shift toward a rights-based approach, and a series of United Nations conferences on women’s rights brought more diverse feminist voices into the global conversation.²² In preparation for the International Conference on Population and Development in Cairo in 1994, a collective of Black women in Chicago, later known as Women of African Descent for Reproductive Justice, articulated the need for a new framework.²³ They argued that the dominant reproductive rights discourse in the United States, which focused narrowly on the abortion debate, failed to address the intersecting barriers faced by women of color and those from marginalized backgrounds.²⁴ Reproductive autonomy is not simply a matter of legal access to abortion or contraception, but is shaped by a range of social, economic, and political factors.²⁵ Therefore real “choice” depends on having access to fundamental human rights such as healthcare, nutrition, political stability,

¹⁸ UN Security Council, Resolution 1325, *Women, Peace and Security*, UN Doc S/RES/1325 (31 October 2000).

¹⁹ Roberts, “Reproductive Justice, Not Just Rights” at 79.

²⁰ *Ibid.*

²¹ Ross & Solinger, *Reproductive Justice: An Introduction* at 51.

²² Onwuachi-Saunders, Dang & Murray, “Reproductive Rights, Reproductive Justice” at 23.

²³ Ross, “Reproductive Justice as Intersectional Feminist Activism” at 286 and 293.

²⁴ *Ibid.* at 291.

²⁵ Ross & Solinger, *Reproductive Justice: An Introduction* at 125; Onwuachi-Saunders, Dang & Murray, “Reproductive Rights, Reproductive Justice” at 22–23.

and safety. Reproductive justice, therefore, adopts a human rights-based approach that extends beyond individual healthcare access and will be explained throughout as “the right to not have children; the right to have children; and the right to raise children in a safe, supportive environment.”²⁶

This perspective exposes the limitations of the pro-choice framework when applied to women in Gaza. While pro-choice advocates may focus on the restrictive abortion law in Gaza, which permits abortion only to save the pregnant woman’s life, this perspective does not take into account the conditions in which women live.²⁷ Even if the law were broader, many would still be unable to safely access abortion care or exercise genuine autonomy over their reproductive decisions. The prevailing circumstances make it nearly impossible for women to realize reproductive justice in any meaningful sense.²⁸

1.3 Intersections of Reproductive Justice and IHRL

This section examines four human rights instruments that contribute to the reproductive justice architecture of IHRL; *the Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), *the Convention on the Rights of the Child* (CRC), *the International Covenant on Economic, Social and Cultural Rights* (ICESCR), and *the International Covenant on Civil and Political Rights* (ICCPR). Once in force for a state party, these treaties impose binding obligations under international law.²⁹ As a party to each of these treaties, Israel is obliged to uphold these rights in both peace and armed conflict.³⁰ While additional international and regional instruments contribute to the development of reproductive rights norms, this analysis focuses on these four global treaties because they are foundational instruments within the UN human rights system, widely ratified, and routinely relied on by treaty bodies and international courts when interpreting state obligations relevant to reproductive justice.³¹

The ICESCR is an international treaty designed to ensure the protection of fundamental social and economic rights for all individuals.³² While the rights it guarantees are recognized as universal, the Covenant recognizes that not all states possess the same resources.³³ For this reason, it introduces the principle of “achieving progressively the full realization of the rights,” requiring states to take steps towards the full realization of these rights to the maximum extent permitted by their circumstances.³⁴ In

²⁶ Ross & Solinger, *Reproductive Justice: An Introduction* at 9.

²⁷ Sarrah Shahawy, “The Unique Landscape of Abortion Law and Access in the Occupied Palestinian Territories” (2019) 21:2 *Health & Human Rights* 47 at 49.

²⁸ *Ibid* at 47–48, 52.

²⁹ Vienna Convention on the Law of Treaties, 23 May 1969, 1155 UNTS 331, arts 11, 14, 26.

³⁰ Office of the United Nations High Commissioner for Human Rights, *Ratification Status for Israel*, online: *UN Treaty Body Database*. The interaction between international human rights law and armed conflict, including the continued application of these treaties in such contexts, is discussed in a later chapter.

³¹ See Human Rights Committee, *K.L. v Peru*, Communication No 1153/2003, UN Doc CCPR/C/85/D/1153/2003 (2005); Human Rights Committee, *Mellet v Ireland*, Communication No 2324/2013, UN Doc CCPR/C/116/D/2324/2013 (2016); *Case of Artavia Murillo et al v Costa Rica*, Preliminary Objections, Merits, Reparations and Costs, Inter-Am Ct HR (Ser C) No 257 (28 November 2012).

³² International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976).

³³ ICESCR, art 2(1).

³⁴ ICESCR, art 2(1).

the context of reproductive justice, a core necessity is access to pre- and postnatal care. The ICESCR calls not only for a general right to health but the “enjoyment of the highest attainable standard of physical and mental health.”³⁵

The Committee on Economic, Social and Cultural Rights has interpreted this right to include access to maternal healthcare, reproductive health services, and the social determinants of health such as adequate nutrition, safe water, and housing.³⁶ In General Comment No. 22, the Committee further clarifies that sexual and reproductive health is an integral part of the right to health and sets out core obligations on states to ensure access to essential maternal health services and to address these underlying determinants.³⁷ Article 11 complements this by recognizing the right to an adequate standard of living.³⁸ Together, these provisions affirm that reproductive justice is not only about medical interventions but also about ensuring the underlying determinants of health necessary for safe pregnancy and childbirth and that support survival and health in the postpartum period and early childhood. Fulfilment cannot be inferred from the presence of a single service or measure where other essential aspects are missing, because the right to health, read with the right to an adequate standard of living, operates across these interconnected stages. Denial of reproductive care that falls below these core obligations may constitute a breach of Article 12, regardless of available resources.

CEDAW reinforces these obligations with an explicit gendered lens. Article 12(2) requires states to provide appropriate services during pregnancy, childbirth, and the postnatal period, ensuring that women receive adequate medical care throughout all stages of reproduction.³⁹ Article 14 further addresses the additional barriers faced by women in rural and marginalized communities, who often experience heightened inequalities in health and access to services.⁴⁰ Under Article 14(b), women in rural areas are entitled to adequate healthcare facilities, which includes access to information, counseling, and family planning services.⁴¹ Article 14(h) also affirms the right to adequate living conditions, emphasizing the importance of secure housing, sanitation, electricity, water supply, transportation, and communication for women’s health and wellbeing.⁴²

Article 16 is also central to the CEDAW framework for reproductive justice, as it recognizes the right of women to decide freely and responsibly on the number and spacing of their children, and to have access to the information, education, and means necessary to exercise this right.⁴³ Protecting this right is fundamental to reproductive autonomy. When states restrict access to family planning, fail to provide

³⁵ ICESCR, art 12.

³⁶ Committee on Economic, Social and Cultural Rights, *General Comment No 14: The Right to the Highest Attainable Standard of Health (Article 12)*, UN Doc E/C.12/2000/4 (2000) at para 43(a), (c), (e).

³⁷ Committee on Economic, Social and Cultural Rights, *General Comment No 22 (2016) on the Right to Sexual and Reproductive Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc E/C.12/GC/22 (2016) at paras 5, 10–11, 49.

³⁸ ICESCR, art 11.

³⁹ Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981), art 12(2).

⁴⁰ CEDAW, art 14.

⁴¹ CEDAW, art 14(b).

⁴² CEDAW, art 14(h).

⁴³ CEDAW, art 16(1)(e).

necessary services, or otherwise interfere with this autonomy, such conduct can constitute a violation not only of the right to health, but also of the broader principle of reproductive justice.⁴⁴

Collectively the provisions of CEDAW require more than mere formal legal equality. Indeed, the CEDAW Committee has found that failures to ensure maternal healthcare or to prevent avoidable maternal deaths constitute violations of the right to health and life, and that such failures are often rooted in structural gender discrimination.⁴⁵ General Recommendation No. 24 on women and health clarifies that states must ensure safe motherhood and allocate the maximum available resources to maternal healthcare.⁴⁶ States are also required to modify or abolish laws and practices that discriminate against women in access to health care.⁴⁷ By framing reproductive justice as an individual right that often requires systemic reform and collective action for its realization, CEDAW provides a comprehensive legal basis for dismantling structural barriers to women's health and for holding states accountable for persistent inequalities in both law and practice.

The Convention on the Rights of the Child (CRC) positions reproductive justice within the broader framework of children's rights by establishing a direct link between maternal health and child wellbeing.⁴⁸ Article 24 of the CRC recognizes the child's right to the highest attainable standard of health and obligates states to ensure access to necessary healthcare services.⁴⁹ Article 24(2)(d) is especially significant as it requires states to take appropriate measures to guarantee both prenatal and postnatal healthcare for mothers.⁵⁰ This provision does more than simply protect maternal health for its own sake; it also affirms the essential connection between a mother's wellbeing and the survival, health, and development of her child.⁵¹ Poor maternal health, inadequate pregnancy care, and unsafe delivery practices are well-documented contributors to perinatal and neonatal mortality, underscoring how reproductive rights and child health are fundamentally indivisible.⁵²

The obligation that "States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services" is a key component of this framework.⁵³ During the drafting of Article 24, the phrase "for financial reasons" was intentionally removed, making clear that no deprivation of access is acceptable, whether based on geography, social status, or political discrimination.⁵⁴ It has been argued that the principle of non-discrimination under Article 2 of the CRC requires that all children,

⁴⁴ Committee on the Elimination of Discrimination against Women, *General Recommendation No 24: Article 12 of the Convention (Women and Health)*, UN Doc A/54/38/Rev.1, chap I (1999) at para 11.

⁴⁵ CEDAW Committee, *General Recommendation No 24* at paras 6, 27.

⁴⁶ *Ibid* at para 27.

⁴⁷ *Ibid* at paras 14, 17.

⁴⁸ Convention on the Rights of the Child, 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), art 24(2)(d).

⁴⁹ CRC, art 24.

⁵⁰ CRC, art 24(2)(d).

⁵¹ CRC, art 24(2)(d).

⁵² Committee on the Rights of the Child, *General Comment No 15: The Right of the Child to the Enjoyment of the Highest Attainable Standard of Health (Art 24)*, 62nd Sess, UN Doc CRC/C/GC/15 (2013) at paras 18, 22–24.

⁵³ CRC, art 24(1).

⁵⁴ Asbjørn Eide & Wenche Barth Eide, *Article 24: The Right to Health*, vol 24 of *A Commentary on the United Nations Convention on the Rights of the Child* (Leiden & Boston: Martinus Nijhoff, 2006) at 12.

regardless of nationality or background, have equal rights to healthcare.⁵⁵ This interpretation has been reinforced by the CRC Committee, which has emphasized that health services must be universally accessible to all children, including girls and adolescent girls, and that reproductive health and family planning information are essential to fulfilling this right.⁵⁶

General Comment No. 15 clarifies that child health must be understood in an integrated and rights-based manner, where physical, emotional, and social wellbeing are interconnected.⁵⁷ The CRC therefore demands not only the provision of maternal healthcare, but also action to address the social determinants that constrain access to care.⁵⁸ In addition, the Committee has underlined that adolescent sexual and reproductive health must be protected through confidential, non-discriminatory information and services, provided in line with the evolving capacities of the child.⁵⁹ Collectively, these standards establish reproductive justice as an essential element of children's rights, requiring that states safeguard both maternal health and the social conditions necessary for realizing every child's right to health and development.

The ICCPR provides civil and political protections that underpin reproductive justice.⁶⁰ Article 6 protects the right to life and has been interpreted by the Human Rights Committee to impose positive obligations on states to prevent foreseeable threats to life, including those arising from lack of access to emergency obstetric care or from conditions that make pregnancy unsafe.⁶¹ This right is non-derogable, meaning that a state cannot suspend it under any circumstances, and must be respected even during times of armed conflict or public emergency.⁶² Article 7 prohibits torture and cruel, inhuman, or degrading treatment, which can encompass the denial of essential medical treatment, including reproductive healthcare.⁶³ The ICCPR imposes binding obligations to maintain minimum standards of care and protection for pregnant women and those seeking reproductive services.⁶⁴ This includes not only protection from arbitrary deprivation of life but also the obligation to take positive measures to safeguard life, especially in contexts of heightened vulnerability such as pregnancy and childbirth.⁶⁵

⁵⁵ John Tobin, "Article 24: The Right to Health" in John Tobin, ed, *The UN Convention on the Rights of the Child: A Commentary* (Oxford: Oxford University Press, 2019) 903 at 921, 923, 926.

⁵⁶ Committee on the Rights of the Child, *General comment No 4 (2003): Adolescent health and development in the context of the Convention on the Rights of the Child*, UN Doc CRC/GC/2003/4 (2003) at paras 24, 39(g).

⁵⁷ CRC Committee, *General Comment No 15* at paras 1-2, 7.

⁵⁸ *Ibid* at paras 18, 24-27.

⁵⁹ *Ibid* at paras 24, 39(c)-(g).

⁶⁰ International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

⁶¹ Human Rights Committee, *General Comment No 36: Article 6: Right to Life*, UN Doc CCPR/C/GC/36 (2018) at paras 21, 26.

⁶² Human Rights Committee, *General Comment No 29: States of Emergency (Article 4)*, UN Doc CCPR/C/21/Rev.1/Add.11 (2001) at paras 7, 11.

⁶³ ICCPR, art 7; Human Rights Committee, *General Comment No 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*, UN Doc HRI/GEN/1/Rev.9 (Vol I) (1992) at para 5; Human Rights Committee, *Mellet v Ireland*, Communication No 2324/2013, UN Doc CCPR/C/116/D/2324/2013 (2016) at paras 7.4-7.8.

⁶⁴ HRC, *General Comment No 36* at paras 21, 26; HRC, *Mellet v Ireland* at paras 7.4-7.8.

⁶⁵ HRC, *General Comment No 36* at paras 7, 26.

1.4 Reproductive Justice During Armed Conflict and Under Occupation

Armed conflict and occupation can undermine reproductive justice by restricting bodily autonomy and by eroding the practical supports needed for pregnancy, childbirth, and early parenting. In Gaza, these harms are intensified by long standing restrictions that shape both health outcomes and the ability to exercise reproductive autonomy. This section first clarifies how IHRL continues to apply alongside IHL during armed conflict, then explains the legal test for occupation and why it matters, and finally sets out the obligations that follow for parties to the conflict and for the occupying power. The ICJ held that international human rights treaties continue to apply in times of armed conflict, except where lawful derogation is explicitly permitted, such as under Article 4 of the ICCPR.⁶⁶ It explained that the relationship between IHL and IHRL varies by context: some rights fall exclusively under humanitarian law, others under human rights law, and some under both.⁶⁷ As a result, both legal frameworks must be considered throughout periods of conflict. In 2011, the International Law Commission (ILC), the UN body responsible for the codification and progressive development of international law, addressed this issue in its *Draft Articles on the Effects of Armed Conflicts on Treaties*.⁶⁸ It stated that “the existence of an armed conflict does not *ipso facto* terminate or suspend the operation of treaties,” whether between states parties to the conflict or between a state party and a state uninvolved in the conflict.⁶⁹ With that baseline in place, the next question is how these concurrent frameworks apply in Gaza, where the legal context is defined not only by hostilities but also by a continuing occupation. This section has two objectives. First, it sets out the doctrinal basis for applying IHRL alongside IHL during armed conflict. Second, it explains when territory is considered occupied under IHL and why that status matters for the content of legal obligations. This sequencing is important for the analysis that follows in the next chapter, because it clarifies both the general duties that apply to parties to a conflict and the additional duties that attach to an occupying power.

Reproductive justice is exceptionally difficult to realize under occupation, because occupation concentrates coercive control over everyday life which can narrow autonomy and destabilize the social and material conditions that make safe pregnancy, childbirth, and early parenting possible.⁷⁰ Occupation under IHL is not automatically a violation of IHRL, and a belligerent occupier could, in principle, comply with the law of occupation while also meeting its human rights obligations.⁷¹ The question is which rights are engaged during occupation and whether the occupier’s measures are lawful, necessary, and

⁶⁶ *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion, 19 July 2024, I.C.J., at para 106.

⁶⁷ *Ibid* at para 106.

⁶⁸ International Law Commission, *Draft Articles on the Effects of Armed Conflicts on Treaties*, 66th Sess, Supp No 10, UN Doc A/66/10 (2011) at 161.

⁶⁹ *Ibid* art 3.

⁷⁰ Ruby Mae Axelson & Prachiti Venkatraman, “Reproductive Violence in Palestine: The Need for a Feminist Approach to Justice” (1 February 2024), online: *Opinio Juris* (blog); *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004, [2004] I.C.J. Rep 136 at para 106-113; Human Rights Committee, *General Comment No 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, UN Doc CCPR/C/21/Rev.1/Add.13 (26 May 2004) at paras 10-11.

⁷¹ *Legal Consequences of the Construction of a Wall*, Advisory Opinion at paras 106, 109-113; Human Rights Committee, *General Comment No 31* at para 10.

proportionate in light of its continuing duties to the protected population.⁷² In the Palestinian context, the obstacles imposed through restrictions on the movement of people and goods, as well as access to essential institutions, result in significant disparities in both autonomy and access to care.⁷³ These disparities are evident in reported health outcomes; for example, in 2017, the infant mortality rate in Palestine was about six times higher than that of Israel.⁷⁴ Similarly, in 2014, Gaza's maternal mortality rate was over four times higher than Israel's, with 30 deaths per 100,000 live births in Gaza compared to 7 per 100,000 in Israel.⁷⁵ Understanding how the occupation of Palestine by Israel operates under international law is therefore essential to identifying the obligations of the occupying power and the specific actions that directly undermine the realization of reproductive justice. Central to this analysis is clearly identifying the human rights and humanitarian law duties of each party to the conflict, and, for the purposes of this section, those of an occupying power.

In its Advisory Opinion on the *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, the International Court of Justice confirmed that the Occupied Palestinian Territory (OPT) is "a single territorial unit."⁷⁶ When explaining the OPT, the Court makes clear that it is referring to the West Bank, East Jerusalem, and the Gaza Strip, to show that while not geographically connected, they are a single entity under the law.⁷⁷ Later in the Advisory Opinion, the Court examines whether Gaza is occupied, since, unlike the West Bank and East Jerusalem, there was, until the events of 7 October 2023, no permanent Israeli military presence within Gaza.⁷⁸ Article 42 of the 1907 Hague Regulations provides the relevant definition, stating: "Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised."⁷⁹ Thus, whether territory is occupied is a question of authority and control, as opposed to exclusive physical presence within specific territory.

The Court drew on investigations from The Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, which found that despite the 2005 disengagement, Israel retains extensive control over Gaza, including its airspace, territorial waters, border crossings, and essential infrastructure such as water, electricity, and the population registry.⁸⁰ Furthermore, Israel's authority extends to regulating Gaza's monetary market, customs, movement of goods and people, with these forms of control persisting even during periods without active hostilities.⁸¹

⁷² *Legal Consequences of the Construction of a Wall*, Advisory Opinion at paras 106-113; Human Rights Committee, General Comment No 31 at para 10.

⁷³ United Nations Office for the Coordination of Humanitarian Affairs, "Gaza Crossings: Movement of People and Goods", online: OCHA oPt; *Legal Consequences of the Construction of a Wall*, Advisory Opinion at paras 133-134.

⁷⁴ Cordelia Freeman & Hala Shoman, "No Justice in a Genocide: Sexual and Reproductive Health and Rights in Gaza" (2025) 33:1 *Sexual & Reproductive Health Matters* 1 at 2.

⁷⁵ Freeman & Shoman, "No Justice in a Genocide" at 2.

⁷⁶ *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion, 19 July 2024, I.C.J. at para 78.

⁷⁷ *Ibid* at para 78.

⁷⁸ *Ibid* at para 85, 88.

⁷⁹ Regulations Respecting the Laws and Customs of War on Land, annexed to Hague Convention (IV) Respecting the Laws and Customs of War on Land, 18 October 1907, art 42.

⁸⁰ *Legal Consequences Arising from the Policies and Practices*, Advisory Opinion at para 89.

⁸¹ *Ibid* at para 89.

The principle that occupation does not require a permanent military presence was affirmed by the United States Military Tribunal in *USA v. Wilhelm List et al.* (the “Hostage Case,” 1948) and by the International Criminal Tribunal for the former Yugoslavia in *Prosecutor v. Mladen Naletilić and Vinko Martinović* (2003), both of which held that it is the capacity to assert authority, rather than constant troop deployment, that determines effective control.⁸² While the Court acknowledges in its Advisory Opinion that it will not be examining any events occurring after October 7, 2023, it does note that Israel’s actions further prove its ability to exercise authority over Gaza.⁸³ Through this examination, the Court concluded that even when Israel does not maintain a physical presence within the territory, it still continues to occupy it and that “Israel’s obligations have remained commensurate with the degree of its effective control over the Gaza Strip.”⁸⁴ The position that Gaza remains occupied despite the presence of troops is widely accepted by both academics and practitioners of IHL.⁸⁵

Once occupation is established, the legal framework shifts in two ways. First, core IHL obligations protecting civilians apply to all parties to the conflict. Second, occupation triggers an additional set of duties that attach specifically to the power exercising effective control over territory. As Gaza is occupied, it is necessary to explain Israel’s obligations as an occupying power under both IHL and IHRL. In *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the ICJ established that the ICCPR applies to actions undertaken by a state outside its own territory when it exercises jurisdiction.⁸⁶ While the ICESCR does not explicitly define its territorial scope, the ICJ indicates that it applies not only throughout a State’s territorial borders but also in all areas under that State’s jurisdiction.⁸⁷ These principles matter in occupation because the occupying power exercises effective control over the civilian population and must apply IHRL alongside IHL, subject to any lawful derogations.⁸⁸ Similar jurisdictional reasoning has been applied to other core human rights treaties relevant to reproductive justice, including the CRC and CEDAW, which international practice and scholarship recognize as capable of applying extraterritorially where a State exercises effective control over individuals or territory.⁸⁹

As confirmed by the International Court of Justice in its *Wall Advisory Opinion*, the Fourth Geneva Convention applies to the occupied Palestinian territory and operates alongside the Hague Regulations as the core treaty framework governing the responsibilities of an occupying power.⁹⁰ Article 154 of the Fourth Geneva Convention explains that the Convention does not replace the 1907 Hague Regulations

⁸² *Legal Consequences Arising from the Policies and Practices*, Advisory Opinion at para 91; *United States v Wilhelm List et al* (The “Hostage Case”), Judgment (19 February 1948), XI *Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No 10* 1230 at 1243; *Prosecutor v Mladen Naletilić and Vinko Martinović*, IT-98-34-T, Judgment (International Criminal Tribunal for the Former Yugoslavia, 31 March 2003) at para 217.

⁸³ *Legal Consequences Arising from the Policies and Practices*, Advisory Opinion at paras 81, 88, 94.

⁸⁴ *Ibid* at para 94.

⁸⁵ Shane Darcy & John Reynolds, “An Enduring Occupation: The Status of the Gaza Strip from the Perspective of International Humanitarian Law” (2010) 15:2 *J Conflict & Sec L* 211 at 224; Mustafa Mari, “The Israeli Disengagement from the Gaza Strip: An End of the Occupation?” (2005) 8 *YB Intl Humanitarian L* 356 at 366.

⁸⁶ *Legal Consequences of the Construction of a Wall*, Advisory Opinion at para 111.

⁸⁷ *Ibid* at para 112

⁸⁸ *Ibid* at paras 106, 109-111.

⁸⁹ Marko Milanović, *Extraterritorial Application of Human Rights Treaties: Law, Principles and Policy* (Oxford: Oxford University Press, 2011) at 58-63.

⁹⁰ *Ibid* at para 101.

but adds to them.⁹¹ In particular, it confirms that the rules in the Fourth Geneva Convention build on and supplement Section III of the Hague Regulations, which governs how occupying powers must conduct themselves in occupied territory.⁹² Article 43 of the Hague Regulations requires the occupying power to take all feasible measures to restore and ensure public order and civil life, including maintaining health services and access to essential goods.⁹³ The Fourth Geneva Convention also limits the occupier's ability to alter local laws and institutions, safeguarding the rights of the occupied population.⁹⁴ The ICJ has affirmed that the Hague Regulations have attained the status of customary international law and are therefore legally binding on Israel.⁹⁵ Importantly, the ICJ has clarified that the obligations of an occupying power under both the Fourth Geneva Convention and the Hague Regulations continue to apply regardless of the occupation's duration.⁹⁶ The key point here is that these occupation duties include maintaining the functioning of medical services and supplies, and providing special protection to vulnerable civilians such as pregnant women, duties that bear directly on reproductive and maternal health.⁹⁷

The legal analysis outlined above makes clear that Gaza remains occupied within the meaning of international law. On this basis, Israel is subject to the obligations of an occupying power as articulated in the Fourth Geneva Convention and the Hague Regulations, as well as the human rights commitments that apply concurrently during armed conflict. These overlapping bodies of law require Israel to protect the rights and welfare of the civilian population, maintain access to essential services, and uphold fundamental guarantees provided by both IHL and IHRL. Recognizing Gaza as occupied territory is therefore central to understanding the full extent of Israel's responsibilities and to evaluating its actions under these binding legal frameworks.

1.5 Intersections of IHRL and IHL in the context of Reproductive Justice

As the following chapter will examine the legal implications of specific events in Gaza, it is necessary to provide a foundational overview of the international legal frameworks that govern the treatment of civilians during armed conflict. This section outlines how IHL and IHRL address the issues of humanitarian aid and starvation, forced displacement, and civilian harm, including the destruction of life-sustaining infrastructure. The purpose of this section is to clarify how IHL and IHRL interact across these three themes, and to establish a clear understanding of the broader international legal landscape against which such violations must be assessed. These laws will then be examined with further specificity in the next chapter, where their applicability will be assessed through conduct in Gaza.

At a minimum, there is a non-international armed conflict between Israel and Hamas alongside an international armed conflict between Israel and the Palestinian Territory in the context of a long-

⁹¹ Geneva Convention relative to the Protection of Civilian Persons in Time of War, 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950), art 154; Regulations Respecting the Laws and Customs of War on Land, annexed to Hague Convention (IV) Respecting the Laws and Customs of War on Land, 18 October 1907, s III.

⁹² GC IV, art 154; Hague Regulations, s III.

⁹³ Hague Regulations, art 43.

⁹⁴ GC IV, arts 47, 64–66.

⁹⁵ *Legal Consequences of the Construction of a Wall*, Advisory Opinion at para 89.

⁹⁶ *Ibid* at para 125.

⁹⁷ GC IV, art 16; GC IV, arts 55–56; Hague Regulations, art 43.

standing belligerent occupation.⁹⁸ In this paper, I will primarily draw on the rules governing international armed conflicts and the law of belligerent occupation, since the discussion focuses on the protection of civilians and related issues such as humanitarian aid, civilian infrastructure and displacement. I do not seek to resolve the wider debate about conflict classification. My aim is simply to make clear that I understand Gaza to be occupied by Israel and to assess the events discussed through the IHL framework that applies to an occupying power and to the ongoing armed conflict between Israel and Hamas in the State of Palestine.

As previously stated in the *Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the ICJ confirmed that IHRL obligations do not cease in times of armed conflict, except where lawful derogation is explicitly permitted under Article 4 of the ICCPR.⁹⁹ By contrast, the ICESCR and CRC contain no general derogation clauses, and neither does CEDAW, which reinforces that these treaty obligations continue to apply during armed conflict alongside IHL. Accordingly, both IHL and IHRL operate concurrently and must be interpreted in light of one another.¹⁰⁰ For individuals who face heightened vulnerabilities, including pregnant women and mothers, GCIV Article 16 affirms that the wounded and sick, the infirm, and expectant mothers must be granted special protection and respect.¹⁰¹ Article 17 further requires parties to the conflict to attempt local agreements to evacuate maternity cases from besieged or encircled areas.¹⁰² Complementing these treaty provisions, Customary International Law (CIL) Rule 134 confirms that pregnant women and mothers of young children affected by conflict must be provided with essential medical assistance.¹⁰³ These rules are considered customary IHL and are therefore binding on all parties to an armed conflict.¹⁰⁴ These protections work alongside obligations under IHRL, including under the ICESCR and CEDAW, and the two frameworks should be read as complementary in protecting civilians during armed conflict. When conflict leads to the destruction of hospitals that provide obstetric care, or when displacement leaves women without prenatal or postnatal services, the result is a denial of both humanitarian law and human rights protections. These frameworks do not conflict in these instances, rather, they reinforce each other and set a higher standard for the treatment of civilians and the protection of life during conflict.

The issue of humanitarian aid and starvation represents one of the clearest areas of intersection between IHL and IHRL. Under IHRL, everyone has a right to life, health, and an adequate standard of living, including food and water.¹⁰⁵ In effect, these are the minimum requirements of a dignified life. Under IHL, parties to a conflict, including occupying powers, are obligated to allow and facilitate the rapid and

⁹⁸ Jérôme de Hemptinne, “Classifying the Gaza Conflict Under International Humanitarian Law, a Complicated Matter” (13 November 2023), online: *EJIL:Talk!* (blog); Peter S Konchak, “The Nature and Implications of Israeli Occupation of the Palestinian Territory: Part I” (25 February 2025), online: *Opinio Juris* (blog).

⁹⁹ *Legal Consequences of the Construction of a Wall*, Advisory Opinion at paras 105-106.

¹⁰⁰ *Ibid* at paras 105-106.

¹⁰¹ GC IV, art 16.

¹⁰² GC IV, art 17.

¹⁰³ ICRC, Rule 134.

¹⁰⁴ International Committee of the Red Cross, “Customary international humanitarian law” (29 October 2010), online: ICRC.

¹⁰⁵ Henry F Carey, “The Special Rapporteur on the Human Rights to Safe Drinking Water and Sanitation: An Assessment of Its First Dozen Years” (2020) 16(2) *Utrecht Law Review* 33 at 35; Ana Ayala & Benjamin Mason Meier, “A Human Rights Approach to the Health Implications of Food and Nutrition Insecurity” (2017) 38 *Public Health Reviews* 1 at 9–10.

unimpeded delivery of humanitarian relief to civilians in need, which as will be examined, can be far from a straightforward endeavor. The Fourth Geneva Convention provides the foundation for this duty. While during armed conflict the parties must consent to humanitarian assistance, during occupation the situation is altogether different. Article 59 requires occupying powers to consent to relief operations when the civilian population is inadequately supplied.¹⁰⁶ The obligatory and unconditional nature of this duty hinges on the precise meaning and scope of “inadequately supplied,” a concept that should be interpreted in light of parallel IHRL protections relating to food, water, health, and an adequate standard of living.”¹⁰⁷ CIL Rules 55 and 56 reaffirm this obligation and stress that such assistance must be delivered without arbitrary obstruction.¹⁰⁸ IHRL reinforces these obligations through the right to life, the right to health, and the right to an adequate standard of living, as reflected in the ICESCR and ICCPR.¹⁰⁹ States are required not only to refrain from actions that result in starvation or deprivation but also to take proactive steps to ensure access to food, water, and medical care.¹¹⁰ When humanitarian access is obstructed, it may result in a violation of IHL through the use of starvation as a method of warfare.¹¹¹ At the same time, it may also violate IHRL by breaching the right to life or health. The overlap between these two frameworks deepens the scope of both the state’s duty of care and state responsibility, especially in situations of occupation where the occupying power has extensive control over the civilian population and their access to essential services.

Forced displacement also implicates both legal regimes, although they frame the issue in slightly different ways. IHL prohibits the forcible transfer or deportation of civilians from occupied territory, except in cases of imperative military necessity or for the security of the civilian population.¹¹² Displacement must be temporary, and the affected population must be allowed to return as soon as the conditions that justified the evacuation no longer exist.¹¹³ IHRL complements these protections through rights that are directly engaged by displacement, including the right to housing and protections for family life, family unity, and privacy.¹¹⁴ Even as IHL allows displacement under specific conditions, there are limits on how that displacement is carried out that must not breach not only humanitarian law or the protections guaranteed under human rights law.¹¹⁵ In this way, the intersection between IHL and IHRL in the context of displacement highlights both the prohibition on arbitrary transfers and the positive obligations to uphold dignity and wellbeing throughout the period of displacement.

The protection of civilians from direct harm, as well as the preservation of infrastructure essential to civilian life, is greatly developed through multiple provisions of IHL.¹¹⁶ It is also an area where IHRL

¹⁰⁶ GC IV, art 59.

¹⁰⁷ *Ibid.*

¹⁰⁸ ICRC, Rules 55-56.

¹⁰⁹ ICCPR, art 6; ICESCR, arts 11-12.

¹¹⁰ Jean-Marie Henckaerts & Louise Doswald-Beck, eds, *Customary International Humanitarian Law*, vol 1: Rules (Cambridge: CUP, 2005) at 186–89, 193–95 (Rules 53, 55).

¹¹¹ ICRC, *Customary IHL*, vol 1: Rules, Rules 53, 55.

¹¹² GC IV, art 49; ICRC, Rule 129.

¹¹³ GC IV, art 49; ICRC, Rule 129.

¹¹⁴ ICCPR, arts 12, 17, 23; ICESCR, art 11(1); CRC, arts 9–10.

¹¹⁵ Representative of the Secretary-General, *Guiding Principles on Internal Displacement*, UN Doc E/CN.4/1998/53/Add.2 (1998), Principles 6–9.

¹¹⁶ Marco Sassòli, *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare* (Cheltenham: Edward Elgar, 2019) at 239–246.

provides complementary and reinforcing protections. The principles of proportionality and distinction are vital here and, as will be seen in the context of Gaza, are framed by Israel in multiple ways to justify specific military actions. The principle of proportionality prohibits attacks that may be expected to cause “incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof” where that harm would be excessive in relation to the concrete and direct military advantage anticipated.¹¹⁷ Even where a target is a lawful military objective, an attack must be cancelled or changed if the expected civilian harm would be disproportionate.¹¹⁸ The principle of distinction requires parties to a conflict to always distinguish between civilians and combatants and between civilian objects and military objectives.¹¹⁹ Attacks may only be directed at combatants and military objectives, not at civilians or civilian objects as such.¹²⁰

These rules are codified in Additional Protocol I (AP I) to the Geneva Conventions, particularly Articles 48, 51 and 57, and are reflected in Customary International Law (CIL) Rules 1, 14 and 15 through 21.¹²¹ Given the focus of this chapter, I summarize these provisions as a framework here, and the next chapter returns to the individual articles and rules when applying them to specific events in Gaza. These articles require parties to distinguish between civilians and combatants, ensure that attacks are not expected to cause excessive harm to civilians in relation to anticipated military advantage, and take all feasible precautions to protect the civilian population and civilian objects.¹²² These obligations are particularly important when attacks affect infrastructure such as water systems, hospitals, schools, and energy supplies, because damage to these systems can have compounding effects on health, safety, and the basic conditions of civilian life. IHRL further reinforces these protections. Article 6 of the ICCPR affirms that “no one shall be arbitrarily deprived of life,” whether through direct targeting or through the destruction of conditions essential for survival.¹²³ As Article 6 is non-derogable, it remains binding even in situations of armed conflict.¹²⁴ Read together, these provisions uphold the principle that civilians must be protected during armed conflict and that any military action must be undertaken with the utmost seriousness of civilian protection in mind.

This chapter has established reproductive justice as the framework for analyzing harms related to pregnancy, childbirth, and the conditions necessary to raise children in a safe and healthy environment in Gaza. It has also explained how IHRL and IHL operate together during armed conflict and occupation, and why that overlap is central to assessing reproductive violence and state responsibility. The next chapter applies this framework to specific conduct in Gaza.

¹¹⁷ Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, 1125 UNTS 3 (entered into force 7 December 1978), art 51(5)(b).

¹¹⁸ AP I 57(2)(b); Rule 19.

¹¹⁹ AP I art 48; Henckaerts & Doswald-Beck, *Customary International Humanitarian Law*, vol I, at Rule 1.

¹²⁰ AP I art 52(2); Henckaerts & Doswald-Beck, *Customary International Humanitarian Law*, vol I at rules 1 and 7.

¹²¹ AP I arts 48, 51, 57; ICRC, Rules 1, 14, 15-21.

¹²² AP I, arts 48, 51, 57; ICRC, Rules 1, 14, 15-21.

¹²³ ICCPR, art 6.

¹²⁴ HRC, *General Comment No 29* at paras 7, 11.

Chapter Two: Reproductive Violence in Gaza

2.1 Introduction

With the international legal landscape of reproductive justice laid out in the previous chapter, it is time to turn to the reality on the ground in Gaza since Israel's offensive following October 7, 2023. I examine how core aspects of the reproductive justice framework are attacked during armed conflict, and how those harms can be understood as reproductive violence. This chapter is divided into three sections. The first section clarifies who holds obligations in relation to Gaza under the contemporary framework of international law, and how those obligations are shaped by occupation, effective control, and the role of non-state actors and third states. The second section documents reproductive violence in Gaza through three pillars that capture the main pathways through which reproductive autonomy and maternal and infant health are undermined, and it assesses the legality of that conduct under both IHRL and IHL. The three pillars are denial and obstruction of aid, civilian harm, including the destruction of life sustaining infrastructure, and displacement. The third section draws these findings together to identify how the patterns described engage available avenues of accountability, including the responsibility of states and the duties of third states to prevent and refrain from contributing to serious violations. To examine these pillars, I focus on specific events and practices within each theme, and I assess whether, and how, they violate reproductive justice and constitute reproductive violence.

2.2 Obligations of Key Actors in Gaza

Chapter one examined if and how Israel is an occupying power and exerts its occupation over the entirety of the Occupied Palestinian Territories (OPT) including Gaza. It is important, however, to understand the dynamic between Hamas and Israel regarding governance and the duties that both parties owe to the population of Gaza vis-à-vis through respective obligations under international law. While Hamas exercises governing authority in Gaza, it does not possess formal statehood under international law.¹²⁵ Nevertheless, as a de facto regime exercising governmental functions, it carries legal significance.¹²⁶ Multiple UN experts have recognized that non-state actors performing government-like functions over a population and territory bear human rights obligations similar to those of states.¹²⁷ In a joint report by nine Special Rapporteurs on the situation in Gaza, the group affirmed that “non-State actors that exercise government-like functions and control over a territory are obliged to respect human rights norms when their conduct affects the human rights of the individuals under their control.”¹²⁸ This

¹²⁵ Gilles Giacca, “Human Rights Obligations of Armed Non-State Actors” in *Economic, Social and Cultural Rights in Armed Conflict: International Human Rights Law and International Humanitarian Law* (Oxford: Oxford University Press, 2014) 230 at 254.

¹²⁶ *Ibid* at 271.

¹²⁷ United Nations Human Rights Council, *Report of the United Nations Fact-Finding Mission on the Gaza Conflict*, UNHRCOR, 12th Sess, UN Doc A/HRC/12/48 (25 September 2009) at para 305; Yael Ronen, “Human Rights Obligations of Territorial Non-State Actors” (2013) 46:1 *Cornell Intl LJ* 21 at 46.

¹²⁸ Giacca, “Human Rights Obligations of Armed Non-State Actors” in *Economic, Social and Cultural Rights in Armed Conflict* (2014) at 254.

position was also advanced in expert missions to Lebanon and Israel following the 2006 conflict, which stressed that armed groups with significant territorial and population control, along with a defined political structure, can and should be expected to uphold human rights standards.¹²⁹ More broadly, the post-war human rights framework assumes that core human rights norms bind all actors that exercise effective control over people and territory.¹³⁰ Although the Universal Declaration of Human Rights is not itself a binding treaty, many scholars and UN bodies treat it as an authoritative statement of baseline human rights norms and argue that at least some of its provisions are reflected in customary international law, shaping the expectations that apply to states and, in some contexts, to de facto governing authorities.¹³¹

However, with Israel imposing air, sea, and land blockades on movement of people and goods in and out of Gaza through its occupation, residents of the area remain heavily dependent on their occupier for basic survival.¹³² As mentioned previously, Israel has legal obligations as an occupying power towards the civilian population within the OPT, which includes respect for the population and provision of essential supplies.¹³³ With the blockades imposed on Gaza, there is a heightened duty of care on Israel to ensure that those obligations are met.¹³⁴ The humanitarian crisis escalated after October 7, when Israel announced a “complete siege”, cut electricity, and sharply restricted the entry of essential supplies, deepening Gaza’s imposed dependence.¹³⁵ Therefore, even as Hamas exercises governmental functions within Gaza and bears human rights obligations, because Gaza is hermetically sealed from the outside, it cannot independently ensure access to the necessities of life without Israeli action.

This distribution of control also matters for how duties are framed. International law often distinguishes between positive obligations to take steps to secure access to rights, and negative obligations to refrain from conduct that interferes with rights.¹³⁶ Even where the scope of a positive duty to provide services in a contested territory is debated, negative obligations are typically immediate and low threshold.¹³⁷ Gaza’s dependence on external control over borders and inputs affects what local authorities can provide, but it does not reduce the force of prohibitions on direct interference with civilian infrastructure essential to life and health.¹³⁸

¹²⁹ Ronen, “Human Rights Obligations of Territorial Non-State Actors” at 46.

¹³⁰ Human Rights Committee, General Comment No 31 at para 10.

¹³¹ William A Schabas, *The Customary International Law of Human Rights* (Oxford University Press, 2021) at 42–43; Universal Declaration of Human Rights, GA Res 217(III), UNGAOR, 3rd Sess, Supp No 13, UN Doc A/810 (1948) 71 at art 2.

¹³² Ilias Bantekas & Safaa S. Jaber, “The Human Rights Obligations of Belligerent Occupiers: Israel and the Gazan Population” (2025) 30 *J Conflict & Sec L* 103 at 119.

¹³³ *Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War*, Geneva, 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950) arts 55–56, 59. Mari, “The Israeli Disengagement” at 366.

¹³⁴ Bantekas & Jaber, “Human Rights Obligations of Belligerent Occupiers” at 119.

¹³⁵ International Committee of the Red Cross, *Israel and the Occupied Territories: Evacuation Order of Gaza Triggers Catastrophic Humanitarian Consequences* (12 October 2023), online: ICRC; Al Jazeera, “World could be witnessing ‘another Nakba’ in Palestine, UN committee warns” (9 May 2025); Times of Israel, “Defense minister announces, ‘complete siege’ of Gaza, no power, food or fuel” (9 October 2023).

¹³⁶ Milanović, *Extraterritorial Application of Human Rights Treaties* at 208 to 210.

¹³⁷ *Ibid* at 119.

¹³⁸ Bantekas & Jaber, “Human Rights Obligations of Belligerent Occupiers” at 104-105, 107-108; Milanović, *Extraterritorial Application of Human Rights Treaties* (OUP, 2011) at 142-143.

In this work, I refer to Palestine as a sovereign state, building on its longstanding assertion of statehood and recognition by the majority of the international community.¹³⁹ The State of Palestine was granted non-member observer State status by the UN General Assembly in 2012, but its statehood is grounded in decades of political, legal, and historical development.¹⁴⁰ This includes the 1988 declaration of independence and its earlier existence as a distinct territorial and national entity.¹⁴¹ Although full UN membership remains unattained due to ongoing political dynamics within international decision-making bodies, this analysis proceeds on the basis that Palestine holds sovereign claims over the occupied Palestinian territory, including the West Bank, East Jerusalem, and Gaza.¹⁴²

Internationally, the State of Palestine is represented by the Palestine Liberation Organization (PLO), which is composed mainly of members of the Palestinian Authority (PA).¹⁴³ The PA governs the West Bank but has no presence in Gaza.¹⁴⁴ There are also no members of Hamas in the PLO.¹⁴⁵ The PLO faces significant limitations in protecting human rights in Gaza during the ongoing conflict. Since Hamas assumed control of Gaza in 2007 following its electoral victory, the PA, which was originally created to govern all of the Occupied Palestinian Territory (OPT), has maintained no administrative or security presence in the territory.¹⁴⁶ This absence has restricted the PA's ability to implement policies or provide services that could safeguard human rights for Gaza's population.

Efforts to reconcile the two factions have been largely unsuccessful.¹⁴⁷ Various agreements, including the Mecca Agreement in 2007 and subsequent talks mediated by Egypt and other regional actors, have failed to establish a lasting unity government or to pave the way for national elections.¹⁴⁸ This continued division has impeded the development of a unified strategy to advance Palestinian national aspirations and has complicated international diplomatic efforts.¹⁴⁹ The divide also has a direct impact on the human rights situation in Gaza. With the PA lacking jurisdiction in Gaza, it remains unable to influence policies or provide meaningful protection for civilians. Meanwhile, UN reports have documented human rights abuses by both Hamas in Gaza and the PA in the West Bank, including restrictions on freedom of expression, arbitrary arrests, and the use of torture.¹⁵⁰ These persistent issues highlight the structural

¹³⁹ *GA Res 43/177, Question of Palestine*, UN GAOR, 43rd Sess, UN Doc A/RES/43/177 (15 December 1988); UNGA Dec 80/506, *Endorsement of the New York Declaration on the Peaceful Settlement of the Question of Palestine and the Implementation of the Two-State Solution*, UN GAOR, 80th Sess, UN Doc A/DEC/80/506 (12 September 2025).

¹⁴⁰ *GA Res 67/19, Status of Palestine in the United Nations*, UN GAOR, 67th Sess, UN Doc A/RES/67/19 (29 November 2012).

¹⁴¹ United Nations General Assembly, Resolution 181 (II), *Future Government of Palestine*, UNGAOR, 2nd Sess, UN Doc A/RES/181(II) (29 November 1947); *GA Res 43/177, Question of Palestine*, UN Doc A/RES/43/177 (15 December 1988).

¹⁴² SC Res 2334, UNSCOR, 71st Year, 7853rd mtg, UN Doc S/RES/2334 (23 December 2016).

¹⁴³ UNGA Res 3236 (XXIX), UNGAOR, 29th Sess, Supp No 31, UN Doc A/RES/3236 (1974).

¹⁴⁴ Jamil Hilal, "The Fragmentation of the Palestinian Political Field: Sources and Ramifications" (2018) 11:1–2 *Contemporary Arab Affairs* 1 at 4–5, 14.

¹⁴⁵ *Ibid* at 13.

¹⁴⁶ *Ibid* at 13.

¹⁴⁷ Benoit Challand, "Fatah-Hamas Rivalries after Gaza: Is Unity Impossible?" (2009) 44:3 *International Spectator* 11 at 15–16.

¹⁴⁸ *Ibid* at 15–16.

¹⁴⁹ International Crisis Group, *Palestine Divided*, Middle East Briefing No 25 (17 December 2008) at 1–2.

¹⁵⁰ UNHRC, *Report of the United Nations High Commissioner for Human Rights*, UN Doc A/HRC/49/83 (2022) at paras 56–57.

challenges faced by Palestinians in both territories and reinforce the urgent need for comprehensive political reform and statehood. This issue of division becomes more evident through Israel's continued imprisonment of Marwan Barghouti, a Palestinian political leader, known as the "Palestinian Mandela."¹⁵¹ Barghouti's broad public support across political factions has led many observers to view him as one of the few figures capable of unifying the fragmented Palestinian political landscape.¹⁵² For this reason, his continued imprisonment appears to serve not only as punishment, but also as a means of hindering the emergence of unified Palestinian political leadership.

Even before 7 October 2023, Israel consistently ignored its IHRL obligations toward Palestinians.¹⁵³ For years prior, Gaza faced severe and sustained restrictions on movement, aid, and infrastructure, reflecting a pattern of non-compliance with Israel's obligations under IHRL.¹⁵⁴ According to the 2012 report by the United Nations Country Team in the occupied Palestinian territories on Gaza's projected habitability by 2020, most health facilities were already unable to provide "safe and adequate services," and urgently needed upgrades to medical equipment.¹⁵⁵ Power outages and water contamination regularly damaged medical equipment, and many patients were forced to seek treatment outside Gaza which was often delayed by Israel.¹⁵⁶ The report also noted high rates of iron deficiency anemia in pregnant women and children.¹⁵⁷ These conditions demonstrate how Israel's policies undermined civilian well-being and failed to meet the minimum standards required of an occupying power.¹⁵⁸

Since 1967, Israel has consistently asserted that it holds no human rights obligations toward individuals living in the OPT.¹⁵⁹ It contends that that international conventions, unlike customary international law, require explicit territorial application and therefore do not extend to the OPT.¹⁶⁰ Israel further asserts that in situations where IHL applies, such as occupation or armed conflict, IHRL does not apply concurrently.¹⁶¹ In line with this position, the Israeli government excludes all data related to the OPT and the Occupied Syrian Golan from its reports to human rights treaty bodies.¹⁶² It argues that it does not exercise effective control over these areas and that the treaties in question do not apply extraterritorially.¹⁶³ The ICJ and multiple treaty bodies have rejected this view, affirming instead that human rights treaties apply where a state exercises jurisdiction through effective control, and that IHRL

¹⁵¹ The Lemkin Institute for Genocide Prevention and Human Security, "Statement Calling for the Release of Marwan Barghouti from Israeli Prison" (26 October 2025), online: *The Lemkin Institute*.

¹⁵² Alessandra Bajec, "Why Marwan Barghouti's shadow hangs over Palestine's future" (28 October 2025), online: *The New Arab*.

¹⁵³ *Legal Consequences of the Construction of a Wall*, Advisory Opinion at paras 107-113.

¹⁵⁴ *Ibid* at paras 133-134.

¹⁵⁵ United Nations Country Team in the occupied Palestinian territory, *Gaza in 2020: A Liveable Place?* (Jerusalem: August 2012) at 13.

¹⁵⁶ United Nations Country Team, *Gaza in 2020: A Liveable Place?* at 13.

¹⁵⁷ *Ibid* at 13.

¹⁵⁸ *Ibid* at 7; GC IV, arts 43, 55-56.

¹⁵⁹ Bantekas & Jaber, "Human Rights Obligations of Belligerent Occupiers" at 112.

¹⁶⁰ *Ibid* at 112.

¹⁶¹ Israel, *Fifth Periodic Report Submitted under Article 40 of the International Covenant on Civil and Political Rights, Pursuant to the Optional Reporting Procedure* (Human Rights Committee, 125th Sess, UN Doc CCPR/C/ISR/5 (2019)) at paras 22-26.

¹⁶² UNCRC, *Concluding Observations on the Second to Fourth Periodic Reports of Israel*, UN Doc CRC/C/ISR/CO/2-4 (2013) at para 3.

¹⁶³ Bantekas & Jaber, "Human Rights Obligations of Belligerent Occupiers" at 112.

and IHL operate concurrently in situations of armed conflict and occupation, subject to any lawful derogations.¹⁶⁴

Soon after Israel withdrew its civilian settlements and military presence from Gaza in 2005, it announced the termination of the military administration that had governed the territory since 1967 and claimed that full authority over Gaza had been transferred to the PA.¹⁶⁵ Although the Israeli Supreme Court had previously recognized Israel as a belligerent occupier in both Gaza and the West Bank and applied the Fourth Geneva Convention and Hague Regulations to evaluate its conduct, its stance shifted following the disengagement.¹⁶⁶ While the applicability of the laws of occupation do not depend on the physical presence of occupying forces in the territory, Israel maintained that its withdrawal relieved it of obligations under IHL and IHRL toward Gaza's population.¹⁶⁷ This view was reinforced in 2008 when the Supreme Court of Israel ruled that Israel had not exercised effective control over the Gaza Strip since 2005 and therefore concluded that Gaza was no longer occupied.¹⁶⁸

With Israel denying its responsibilities under IHRL, the PA lacking any administrative control over Gaza, and Hamas both engaged in armed conflict with Israel and reliant on it for essential services, effective governance in Gaza remains absent. Consequently, there is no single authority capable of upholding or ensuring the protection of Palestinian human rights in the territory. However, regardless of Israel's decision to ignore its international legal responsibilities, it does still have them as confirmed by the ICJ on more than one occasion.¹⁶⁹ Furthermore, third states who are not directly involved in the hostilities, also have obligations that go beyond mere neutrality. For example, under common article 1 of the Geneva Conventions, third states are required not only to respect the Conventions themselves but also to ensure respect for them by others, using the means reasonably available to them to help prevent breach of IHL or bring prevailing breaches to an end.¹⁷⁰ Under the Genocide convention, state parties have an obligation to prevent genocide where there is a serious risk of its commission, using all means reasonably available to them in light of their capacity to influence the actors involved.¹⁷¹ Along similar lines, under the law of state responsibility, third states must not be complicit in grave breaches of IHL, for example by providing political, military or economic support that significantly contributes to such violations with knowledge of their character.¹⁷² These third-state duties under international law, including the duty to prevent genocide and to refrain from complicity in serious violations of IHL and IHRL, will be examined in more detail in the following chapter.

¹⁶⁴ *Ibid* at 112; *Legal Consequences of the Construction of a Wall*, Advisory Opinion at para 111; Human Rights Committee, General Comment No 31 at para 10.

¹⁶⁵ Darcy & Reynolds, "An Enduring Occupation" at 225, 241

¹⁶⁶ *Ibid* at 224.

¹⁶⁷ Mari, "The Israeli Disengagement" at 366.

¹⁶⁸ *Jaber Al-Bassiouni Ahmed et al. v. Prime Minister and Minister of Defence*, HCJ 9132/07 (30 January 2008) (IsrSC), Deliberations at para 2.

¹⁶⁹ *Legal Consequences of the Construction of a Wall*, Advisory Opinion at para 106; *Legal Consequences Arising from the Policies and Practices*, Advisory Opinion at para 100.

¹⁷⁰ Knut Dörmann & Jose Serralvo, "Common Article 1 to the Geneva Conventions and the obligation to prevent international humanitarian law violations" (2014) 96:895/896 *International Review of the Red Cross* 707 at 707, 727; GC I, art 1

¹⁷¹ *Bosnia v Serbia*, [2007] ICJ Rep 43 at para 373.

¹⁷² International Law Commission, "Articles on Responsibility of States for Internationally Wrongful Acts" (2001), arts 16, 41(2).

2.3 Denial and Obstruction of Aid

The legal obligations governing humanitarian access in Gaza emerge from the compounding application of both the law of occupation and the law of international armed conflict. Israel's role as an occupying power, triggers the obligations set out in the Fourth Geneva Convention (GC IV), including the duty to ensure the provision of essential supplies to the civilian population under Article 55 and to permit and facilitate relief operations when the population is inadequately supplied under Article 59.¹⁷³ At the same time, the hostilities unfold within the context of a continuing belligerent occupation, which grounds the application of the law of international armed conflict and activates the rules on relief operations. Under this framework, customary rules reflected in AP I, art 70 require the rapid and unimpeded passage of humanitarian relief. While Israel is not a party to AP I, the obligation to allow and facilitate humanitarian relief is widely recognized in customary international law and applies regardless of treaty ratification.¹⁷⁴ These legal frameworks are not mutually exclusive but operate in parallel and simultaneously. Where occupation imposes a positive duty to provide, the law of international armed conflict prohibits obstruction or denial of humanitarian aid, the combined effect is a heightened standard of protection for civilians.¹⁷⁵ In the case of Gaza, Israel's legal responsibilities are engaged under IHL both as a party to the hostilities and, given its effective control, as an occupying power with additional duties toward the civilian population.

Following the events of October 7, Israel intensified its restrictions on the movement of goods and people in Gaza at the Erez crossing, which is the main entry point between Gaza and Israel, and by seizing operational control of the Rafah crossing on May 7, 2024.¹⁷⁶ Rafah, which connects Gaza to Egypt, had remained one of the only viable gateways for movement.¹⁷⁷ Of the seven total border crossings into Gaza, five have been closed since Israel's 2005 disengagement and Hamas's assumption of control in 2007, leaving Rafah and Erez as the sole access points.¹⁷⁸ While the movement of supplies through Rafah has long required Israeli approval, Israel's direct control has introduced additional procedural and physical barriers that severely constrain what can and cannot enter the territory.¹⁷⁹ The significance of these constraints is compounded where access to relief is narrowed while local means of securing food are simultaneously undermined.

The border regime matters not only for humanitarian deliveries but also for how civilians can sustain themselves day to day. Limits on access to fishing areas, the destruction of farmland, and repeated displacement away from agricultural land and related infrastructure reduce the capacity to feed the

¹⁷³ GC IV, art 59, 55.

¹⁷⁴ Henckaerts & Doswald-Beck, *Customary International Humanitarian Law*, vol I at 193–94, 197; International Law Commission, *Draft Conclusions on Identification of Customary International Law*, UN Doc A/73/10 (2018) conclusion 15 and commentary.

¹⁷⁵ Henckaerts & Doswald-Beck, *Customary International Humanitarian Law*, vol I (CUP, 2005) 193, Rule 55.

¹⁷⁶ *Israel seizes key Gaza border crossing*, *Al Jazeera* (7 May 2024).

¹⁷⁷ Maram Humaid, "The Seven Border Crossings of Gaza", *Al Jazeera* (15 June 2022).

¹⁷⁸ *Ibid.*

¹⁷⁹ Yara M. Asi, *Isolating Gaza from the World: Humanitarian Implications of Israel's Seizure of Rafah*, Arab Center Washington DC (6 June 2024).

population even where markets collapse and relief is blocked.¹⁸⁰ When ordinary livelihoods are disrupted and local production is degraded, households become more dependent on external assistance at the same time that entry points are narrowed, and supplies are delayed or denied. In combination, these practices can produce deprivation that is not merely incidental, but is driven by control over borders, movement, and life sustaining resources. This pattern engages the prohibition on starvation as a method of warfare, including rules that bar using starvation against civilians and that prohibit attacking, destroying, removing, or rendering useless objects indispensable to the survival of the civilian population.¹⁸¹ Against the background of the duty to permit and facilitate relief, this framing clarifies why the weaponization of food and the denial of essentials requires distinct legal analysis, rather than being treated as an extension of border obstruction.¹⁸²

Furthermore, the vulnerability created by restricted food access has been exploited through distribution arrangements that concentrate civilians in predictable locations under insecure conditions, increasing the risk of deadly outcomes.¹⁸³ One of the most devastating incidents was the February 29, 2024 “Flour Massacre” on Al-Rashid Street in Gaza City, where over 100 Palestinians were killed, and 700 injured as Israeli forces guarding the aid opened fire near an distribution convoy.¹⁸⁴ The convoy was not organized by international aid groups, whose operations in northern Gaza remained suspended due to Israel’s ongoing refusal to permit aid trucks and the deterioration of security conditions described as “rising lawlessness.”¹⁸⁵ Instead, the convoy was coordinated by Israeli authorities in collaboration with local businessmen.¹⁸⁶ While some Palestinians were killed or injured by aid trucks trying to escape the area, UN Secretary General’s spokesperson Stéphane Dujarric said that “from what they saw, in terms of the patients alive and getting treatment is that there is a large number of gunshot wounds.”¹⁸⁷ Without access to the bodies, the team was unable to determine if the same applied to those who were killed.¹⁸⁸ IHL permits parties to set and supervise technical arrangements for relief distribution, but those arrangements must be applied in good faith and cannot be used in a way that is arbitrary or that prevents rapid delivery based on civilian need.¹⁸⁹ It also requires parties to respect and protect relief operations

¹⁸⁰ Food and Agriculture Organization of the United Nations, “Gaza’s agricultural infrastructure continues to deteriorate at alarming rate” (News Release, 26 May 2025), online: *FAO*.

¹⁸¹ Henckaerts & Doswald-Beck, *Customary International Humanitarian Law*, vol I (CUP, 2005) 186–87, Rule 53; 189–90, Rule 54.

¹⁸² Gisha, “*The War on Food Production: Fishing*” (24 June 2025), online: *Gisha*; Human Rights Watch, “*Israel: Starvation Used as Weapon of War in Gaza*” (18 December 2023), online: *Human Rights Watch*; ICRC Rules 53-54.

¹⁸³ United Nations General Assembly, *Draft Resolution A/ES-10/L.34/Rev.1*, Tenth Emergency Special Session, Agenda item 5, *Protection of civilians and upholding legal and humanitarian obligations* (9 June 2025) at paras 5, 6, 8, 9.

¹⁸⁴ United Nations Human Rights Office of the High Commissioner, “UN Experts Condemn ‘Flour Massacre’, Urge Israel to End Campaign of Starvation in Gaza” (5 March 2024).

¹⁸⁵ *The New York Times*, “*Disastrous Convoy Was Part of New Israeli Effort to Hand Out More Aid in Gaza*” (2 March 2024), online: *The New York Times*.

¹⁸⁶ *Ibid.*

¹⁸⁷ United Nations, “*Daily Press Briefing by the Office of the Spokesperson for the Secretary-General*” (1 March 2024), online: *UN Meetings Coverage and Press Releases*.

¹⁸⁸ *Ibid.*

¹⁸⁹ Dapo Akande & Emanuela-Chiara Gillard, *Oxford Guidance on the Law Relating to Humanitarian Relief Operations in Situations of Armed Conflict* (Oxford: Oxford Institute for Ethics, Law and Armed Conflict, 2016) at 70-72.

and those involved in them, so distribution models that foreseeably expose civilians and relief activity to violence raise direct compliance concerns, not only operational ones.¹⁹⁰

The Israel Defense Forces (IDF) reasoning that individuals approaching soldiers constituted an "imminent threat" lacks legal justification under both IHL and IHRL.¹⁹¹ Under IHRL, the use of potentially lethal force is permitted only when it is strictly necessary to protect against an imminent threat to life and must be based on a case-specific assessment, not on physical proximity or broad assumptions.¹⁹² Under IHL, civilians are protected from attack unless and for such time they take a direct part in hostilities.¹⁹³ In the absence of evidence that those targeted were directly participating in hostilities (IHL) or posed an immediate danger to life (IHRL), such actions may amount to an unlawful targeting of civilians under IHL and therefore constitute an arbitrary deprivation of life under IHRL.¹⁹⁴ Multiple states called for an independent investigation into the flour massacre, but no such investigation was formally established with published findings.¹⁹⁵

This attack on Palestinians attempting to access aid was just one of many, with such incidents sharply increasing following the establishment of the Gaza Humanitarian Foundation, a U.S.-backed entity given coordination over aid delivery through Israeli-controlled crossings.¹⁹⁶ The Foundation has faced widespread criticism for its lack of transparency, absence of neutrality, and operational practices that have left civilians exposed in high-risk areas while waiting for aid.¹⁹⁷ Under IHL, humanitarian relief operations must be carried out in a manner that is humanitarian and impartial in character and conducted without adverse distinction, as required by Article 70(1) of API I.¹⁹⁸ When these conditions are not met, the legal protection afforded to relief operations may be undermined, and civilian access to aid placed at greater risk.

Regarding reproductive violence, the actions to obstruct food has detrimental effects not only on those who are currently pregnant, but also for future fertility and the ability to raise children. By late 2025, famine and severe food insecurity in Gaza have reshaped pregnancy, birth and early infancy around hunger. In December 2023 and January 2024, a survey by the Global Nutrition Cluster found that nine in ten children under two, and more than nine in ten pregnant and breastfeeding women, had consumed two or fewer food groups in the previous day, a pattern classified as "severe food poverty," and nearly

¹⁹⁰ *Ibid* at 78, 81-83.

¹⁹¹ CBS News, "Israel faces mounting condemnation over killing of Palestinians in Gaza City aid distribution melee" (1 March 2024), online: CBS.

¹⁹² Geneva Academy of International Humanitarian Law and Human Rights, *Use of Force in Law Enforcement and the Right to Life: The Role of the Human Rights Council*, In-Brief No 6 (Geneva: Geneva Academy, 2016) at 23–24.

¹⁹³ *Bosnia v Serbia*, [2007] ICJ Rep 43 at paras 340-341.

¹⁹⁴ UN Human Rights Committee, *General Comment No 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights (Right to Life)*, UN Doc CCPR/C/GC/36 (30 October 2018) at para 67; AP I art 51(2)(3).

¹⁹⁵ Dan Sabbagh, "Israel closes down or leaves unresolved 88% of cases of alleged war crimes or abuse – report" (2 August 2025), online: *The Guardian*.

¹⁹⁶ Office of the United Nations High Commissioner for Human Rights, "UN experts call for immediate dismantling of Gaza Humanitarian Foundation" (5 August 2025), online: OHCHR.

¹⁹⁷ Office of the United Nations High Commissioner for Human Rights, "Gaza: Palestinians seeking food continue to be killed by Israeli military" (24 June 2025), online: OHCHR.

¹⁹⁸ AP I, art 70(1); Akande & Gillard, *Oxford Guidance on the Law Relating to Humanitarian Relief Operations in Situations of Armed Conflict* at 14.

two thirds of households were eating just once a day.¹⁹⁹ In northern Gaza, one in six babies and toddlers were already acutely malnourished.²⁰⁰ Humanitarian agencies now warn that the situation has worsened and describe Gaza's food crisis as unprecedented in its speed and complexity.²⁰¹

In this context, basic infant feeding has become unsustainable. Health experts worldwide promote exclusive breastfeeding in the first months of life because it delivers essential nutrition and antibodies that protect against diarrhea, pneumonia and other infections.²⁰² In Gaza, however, mothers report struggling to produce breastmilk because of severe hunger, dehydration, stress and the lack of privacy caused by repeated displacement.²⁰³ Without breastfeeding support or access to safe infant formula, some caregivers report giving babies bottles of plain water or water mixed with ground chickpeas or tahini, practices that increase risk to the infant.²⁰⁴ UNICEF has warned that the Gaza Strip is "poised to witness an explosion in preventable child deaths" and that, if the conflict continues, children's nutrition will continue to collapse, leading to life-long health problems and potential intergenerational consequences.²⁰⁵

This reality directly undermines the core elements of reproductive justice, the ability to carry a pregnancy safely to term and to raise children in safe and healthy environments. It is also difficult to reconcile with international human rights obligations. As comprehensively addressed in chapter one, under the ICESCR, there is a right to adequate food and to the highest attainable standard of health, which treaty bodies interpret as including maternal and child health and the reduction of stillbirths and infant deaths.²⁰⁶ CEDAW builds on this by requiring states to ensure adequate nutrition and appropriate services during pregnancy and lactation.²⁰⁷ The CRC guarantees every child the rights to life and to the highest attainable standard of health and calls for measures to reduce infant mortality, ensure access to nutritious food and safe drinking water, and secure appropriate pre and postnatal care for mothers.²⁰⁸ A situation in which infants are fed unsafe substitutes for breastmilk because their caregivers are starving, and in which large numbers of babies and young children are acutely malnourished, indicates serious breaches of the rights of both women and children.²⁰⁹ It also raises serious concerns about an occupying power's obligations to facilitate and ensure relief supplies, including food, for the civilian population.²¹⁰

¹⁹⁹ Global Nutrition Cluster, *Nutrition Vulnerability and Situation Analysis – Gaza* (February 2024), online: *Nutrition Cluster* at 3, 9.

²⁰⁰ *Ibid* at 3, 14.

²⁰¹ UNICEF, WFP & FAO, "UN Agencies warn key food and nutrition indicators exceed famine thresholds in Gaza" (29 July 2025), online: *UNICEF*.

²⁰² Save the Children, "Gaza: Over 40% of pregnant and breastfeeding women in Save the Children clinics malnourished" (4 August 2025), online: *Save the Children*.

²⁰³ *Ibid*.

²⁰⁴ *Ibid*.

²⁰⁵ UNICEF, "Children's lives threatened by rising malnutrition in the Gaza Strip" (19 February 2024), online: *UNICEF*.

²⁰⁶ ICESCR, arts 11(1)(2), 12(1)(2)(a); Committee on Economic, Social and Cultural Rights, *General Comment No 14: The Right to the Highest Attainable Standard of Health (Article 12 of the Covenant)*, UN Doc E/C.12/2000/4 (11 August 2000) at para 14.

²⁰⁷ CEDAW, art 12(2).

²⁰⁸ CRC, arts 24(1)(2)(a)(c)(d).

²⁰⁹ GC IV, arts 16, 27.

²¹⁰ GC IV, arts 55, 57; AP I, art 70.

Evidence from past famines suggests that the current famine in Gaza will not only cause immediate maternal and infant deaths but is also likely to depress future fertility and damage the long-term reproductive health of those who survive.²¹¹ Studies of the 1959–61 Chinese famine show that women exposed to famine in utero or early childhood have higher rates of sterility, lower overall fertility and earlier menopause than non-exposed cohorts, indicating a shortened reproductive lifespan and fewer opportunities to bear children.²¹² Research on early-life undernutrition more broadly links severe deprivation in pregnancy and early childhood to long-term endocrine and metabolic changes, reduced ovarian reserve, menstrual and ovulatory disorders and higher risks of adverse pregnancy outcomes in adulthood.²¹³ On this basis, it is reasonable to expect that fetuses, infants and children who experience famine in Gaza today may face diminished reproductive capacity and increased risks in future pregnancies. Legally, these foreseeable long-term effects intensify the seriousness of the violations: they do not only interfere with immediate rights to health and life under the ICESCR, CEDAW and the CRC, and with the right to decide freely on the number and spacing of children, but also threaten to permanently narrow the reproductive possibilities of an entire generation, which in turn raises serious concerns under interpretations of the Genocide Convention that prohibit measures intended to prevent births within a protected group.²¹⁴

In addition to restrictions of food aid, Israel has maintained an unofficial and unpublished list of necessities prohibited from entering Gaza.²¹⁵ The rationale for this list remains unclear, and decisions appear to be made without transparency or public explanation.²¹⁶ Under IHL, there is a strong basis to view these secret restrictions as breaching Israel’s obligations as an occupying power to ensure the food and medical supplies of the population and to facilitate rapid and unimpeded humanitarian relief, as set out in Geneva Convention IV articles 55 and 56.²¹⁷ While these provisions permit an occupying power to inspect consignments, verify their civilian character, and coordinate reasonable technical arrangements for their passage and distribution, they do not provide a legal basis for blanket or arbitrary prohibitions on essential civilian goods, or for using access restrictions to punish or pressure the civilian population in a manner amounting to collective punishment.²¹⁸ In 2024, both the United Nations Population Fund (UNFPA) and the Egyptian Red Crescent reported that Israel had blocked the entry of critical humanitarian supplies affecting maternal healthcare, including ventilators, maternity kits, ultrasound equipment,

²¹¹ Shige Song, “Assessing the impact of ‘in utero’ exposure to famine on fecundity: Evidence from the 1959–61 famine in China” (2013) 67(3) *Population Studies* 293 at 293, 304–05.

²¹² *Ibid* at 304–05.

²¹³ K A Chan, M W Tsoulis & D M Sloboda, “Early-life nutritional effects on the female reproductive system” (2015) 224(2) *Journal of Endocrinology* R45 at R49.

²¹⁴ *Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948, 78 UNTS 277 (entered into force 12 January 1951) art II(d).

²¹⁵ Tamara Qiblawi et al, “Anesthetics, Crutches, Dates: Inside Israel’s Ghost List of Items Arbitrarily Denied Entry into Gaza”, *CNN* (1 March 2024).

²¹⁶ *Ibid*.

²¹⁷ Emanuela-Chiara Gillard, “The law regulating cross-border relief operations” (2013) 95(890) *International Review of the Red Cross* 351 at 357; GC IV, arts 55, 56.

²¹⁸ Akande & Gillard, *Oxford Guidance on the Law Relating to Humanitarian Relief Operations in Situations of Armed Conflict* at 28–29; Gillard, “The law regulating cross border relief operations” (2013) 95(890) *International Review of the Red Cross* 351 at 355, 357–58; GC IV, art 33; ICRC, Rule 103.

hospital generators, water pumps, oxygen cylinders, and water-purification devices.²¹⁹ These measures are at odds with Israel's obligations under articles 11 and 12 of ICESCR to guarantee access to food and maternal health services, and with article 12 of CEDAW, which requires appropriate services in connection with pregnancy, confinement and the postnatal period.²²⁰

Due to the worsening conditions since October 7, including the obstruction of medical supplies and the collapse of healthcare infrastructure, miscarriages in Gaza have reportedly increased by 300 percent.²²¹ This alarming rise reflects the extreme risks now faced by pregnant women as life-saving care becomes increasingly inaccessible. Although data on maternal mortality remains limited, it is estimated that approximately five women die each month due to childbirth-related causes, a sharp increase from the pre-conflict average of about two deaths per year.²²² For newborns and young children, these outcomes also engage the CRC, which protects the child's rights to life and to the highest attainable standard of health and requires states to take measures to reduce infant mortality and ensure access to nutritious food and safe drinking water.²²³ The blockade on essential supplies for childbirth, particularly incubators and fuel needed to power electricity, has made it nearly impossible to keep newborns alive, especially those born malnourished.²²⁴ In some cases, four or five infants have been forced to share a single incubator.²²⁵

The lack of access to adequate reproductive healthcare also extends beyond current pregnancies, affecting women's long-term fertility. The inability to monitor or treat gynecological conditions has led to an increase in secondary infertility among women in Gaza. Dr. Muhammed Al-Sarraj has observed a rise in cases linked to untreated disorders such as endometriosis, fibroids, ovarian cysts, and chronic infections that progress to fallopian tube disease.²²⁶ He attributes this trend to the complete breakdown of sanitary conditions, a critical shortage of sanitary pads, and a lack of essential medications.²²⁷ Without timely diagnosis and treatment, these conditions severely compromise women's reproductive health and fertility, further underscoring the devastating impact of the blockade on both present and long-term reproductive well-being.²²⁸

Beyond undermining the right to health, these conditions violate CEDAW regarding reproductive autonomy and access to family planning, amounting to reproductive violence.²²⁹ These situations also are in violation of article 12 of the ICESCR, which protects reproductive health, and with the broader

²¹⁹ UNFPA, *Situation Report 11: Occupied Palestinian Territory* (1 November 2024); Saleh Salem & Estelle Shirbon, "For Civilians or Hamas? 'Dual Use' Issue Complicates Gaza Aid Efforts", *Reuters* (5 January 2024).

²²⁰ CEDAW, art 12; ICESCR, arts 11(1)(2), 12(1)(2)(a).

²²¹ Human Rights Watch, *"Five Babies in One Incubator: Violations of Pregnant Women's Rights Amid Israel's Assault on Gaza"* (January 2025) at 29.

²²² Sarah El Deeb, Mohammed Jahjouh & Lee Keath, "A Pregnant Woman in Gaza's Ruins Fears for Her Baby under Israel's Blockade" (28 April 2025), *Associated Press*.

²²³ CRC, arts 24(1)(2)(a)(c).

²²⁴ Sarah El Deeb, Mohammed Jahjouh & Lee Keath, "A Pregnant Woman in Gaza's Ruins Fears for Her Baby Under Israel's Blockade" (28 April 2025).

²²⁵ HRW, *Five Babies in One Incubator* (Jan 2025) at 32.

²²⁶ Haya Ahmed, "War on Women's Health" *The New Arab* (10 April 2025).

²²⁷ *Ibid.*

²²⁸ *Ibid.*

²²⁹ CEDAW, art 12(1); Independent International Commission of Inquiry, *"More than a human can bear"* (13 March 2025) at para 117.

reproductive justice principle that people must be able not only to survive pregnancy, but also to decide freely whether and when to have children and to access the means necessary to realize those decisions.²³⁰ In May 2024, well before the full blockade, facilities were already collapsing due to a lack of aid. Al-Helal Al-Emirati Maternity Hospital in Rafah was handling approximately 85 of Gaza's 180 daily births.²³¹ At that time, it was forced to stop admitting patients due to critical shortages of staff and medical supplies.²³² With the complete halt of aid deliveries, it is difficult to see how other facilities will not suffer the same fate, especially as births continue at an average rate of 130 per day.²³³ The collapse of Al-Helal highlights the increasingly fragile state of Gaza's maternal healthcare infrastructure.

While Israel blames international organizations for insufficient staffing and ineffective aid distribution, its decision to ban UNRWA from operating in the region directly contradicts these claims.²³⁴ On October 28, 2024 the Israeli Knesset passed two pieces of legislation aimed at dismantling UNRWA operations in the OPT.²³⁵ The legislation went into effect on January 30, 2025, meaning that the UNRWA cannot provide any services or have any presence within the OPT and Israeli officials are prohibited from engaging with the UNRWA or anyone acting on its behalf.²³⁶ UNRWA directly delivers many essential services to approximately 6 million Palestinian refugees both within and outside the Occupied Palestinian Territories.²³⁷ From a human rights perspective, deliberately excluding the principal humanitarian provider in the region goes beyond a failure to fulfil socio-economic rights and amounts to active interference with their enjoyment, contrary to the negative obligation under the ICESCR not to obstruct access to the minimum essential level of rights such as food, health and water.²³⁸ This move also conflicts with the duty of an occupying power to permit and facilitate impartial relief actions for the civilian population in need, as set out in Geneva Convention IV article 59 and in article 70 of Additional Protocol I, which is absolute.²³⁹ In the context of an already collapsing health system and widespread acute malnutrition, the decision to end UNRWA's operations entrenches conditions that are incompatible with Israel's obligations under IHL and IHRL and further deepens the reproductive harms faced by Palestinians in Gaza. Overall, the pattern of border closures, deliberate restrictions on essential goods, attacks on civilians seeking aid and the dismantling of UNRWA's operations reflects a coherent policy of obstructing humanitarian relief rather than isolated failures of delivery.

²³⁰ Committee on Economic, Social and Cultural Rights, *General Comment No 14* (11 August 2000) at para 14; Onwuachi-Saunders, Dang & Murray, "Reproductive Rights, Reproductive Justice" at 23.

²³¹ Maggie Fick, "Main Maternity Hospital in Rafah Stops Admitting Patients" *Reuters*, (8 May 2024).

²³² *Ibid.*

²³³ World Health Organization, "Healthy Beginnings, Hopeful Futures: On World Health Day, WHO Calls for an Immediate Ceasefire in Gaza" (7 April 2025).

²³⁴ Kjersti G Berg, Jørgen Jensehaugen & Lex Takkenberg, "The Consequences and Prospects of Israel's Ban of UNRWA" *The Cairo Review of Global Affairs* (Winter 2025).

²³⁵ *Identical Letters Dated 9 December 2024 from the Secretary-General Addressed to the President of the General Assembly and the President of the Security Council*, UNGAOR, 79th Sess, UN Docs A/79/660 & S/2024/952 (2024).

²³⁶ Berg et al, "Israel's Ban of UNRWA" *Cairo Rev* (Winter 2025).

²³⁷ UNHCR, "Figures at a Glance" *UNHCR* (2024).

²³⁸ Committee on Economic, Social and Cultural Rights, *General Comment No 14* (11 August 2000) at paras 33-34, 43(b)-(d).

²³⁹ Akande & Gillard, *Oxford Guidance on the Law Relating to Humanitarian Relief Operations in Situations of Armed Conflict* at 27; GC IV art, 59; AP I, art 70.

2.4 Civilian Harm, Including the Destruction of Life-Sustaining Infrastructure

Nowhere are the devastating effects on the reproductive justice framework starker than in the attacks on healthcare infrastructure in Gaza. As of October 2025, a WHO situation update reported that Gaza's health system was close to collapse, with no fully functional hospitals remaining, only 18 of 36 even partially functioning, and none operating in North Gaza.²⁴⁰ For pregnant women and others needing reproductive healthcare, many nearby hospitals have been destroyed or closed, so prenatal, emergency obstetric and postnatal services often simply do not exist where they live, and reaching the few partially functioning facilities means travelling through zones of conflict.²⁴¹ As a result, women frequently give birth in tents or in overcrowded, damaged wards without enough staff, medicine or medical equipment.²⁴² In this section, I will outline specific cases of attacks against civilians and life-sustaining infrastructure, examine Israel's alleged justifications for these operations, and assess their legality under IHRL and IHL. These cases will show how such attacks disproportionately affect women and pregnant people, undermine future fertility and safe births, and erode the core elements of reproductive justice, including the right to have children and to raise them.

Through Israel's strategy of pushing Palestinians toward the south of Gaza while heavily attacking the north, nothing remains of the health system in northern Gaza.²⁴³ Within this context, the targeting and eventual shutdown of al-Awda Hospital in Jabalia stands out as a central example of how attacks on healthcare become attacks on reproductive justice. Al-Awda came under bombardment as early as 11 October 2023, with ceilings collapsing after a nearby airstrike, and was directly struck on 21 November 2023, killing three doctors and injuring patients.²⁴⁴ During December 2023, al-Awda Hospital was under total siege from Israeli forces, with approximately 250 people trapped inside, including patients, staff and pregnant women, while shelling and gunfire made it practically impossible to enter or evacuate.²⁴⁵ At that time al-Awda was the only functioning maternity and obstetric hospital in northern Gaza, and reports describe at least one pregnant woman and her relative being shot at by snipers as they tried to reach the hospital for care, with one of them killed in the street.²⁴⁶

²⁴⁰ World Health Organization, *oPt Emergency Situation Update*, Issue 66 (7 October 2023–31 October 2025), online (pdf): *WHO At 1*, 3.

²⁴¹ WHO, *oPt Emergency Situation Update*, Issue 66 (7 October 2023–31 October 2025) at 3.

²⁴² Doctors Without Borders/Médecins Sans Frontières (MSF), *"Rafah, southern Gaza: Displaced, pregnant, and living in a tent"* (29 January 2024, updated 28 February 2024), online: *MSF*.

²⁴³ Doctors Without Borders/Médecins Sans Frontières (MSF), *"Gaza: Israeli forces pushing people from north Gaza to the south will only worsen the humanitarian catastrophe"* (9 October 2024, updated 18 February 2025), online: *MSF*; World Health Organization, *"Health system at breaking point as hostilities further intensify in Gaza, WHO warns"* (22 May 2025), online: *WHO*.

²⁴⁴ Institute for Palestine Studies, *"Al Awda Hospital"*, *Documenting the Targeting and Destruction of the Health Sector in the Gaza Strip* (last modified 3 July 2025), online: *IPS*; UN General Assembly, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, UN Doc A/79/232 (11 September 2024) at para 25.

²⁴⁵ UN General Assembly, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, UN Doc A/79/232 (11 September 2024) at para 25.

²⁴⁶ *Ibid.*

One incident detailed in the March 2025 report of the UN CoI OPT includes testimony from a witness at al-Awda Hospital in Jabalia.²⁴⁷ The witness described seeing a pregnant woman shot while approaching the hospital.²⁴⁸ She was left bleeding and died, as no one could reach her due to the siege imposed by Israeli forces.²⁴⁹ In May 2025, Israeli tanks and artillery repeatedly struck al-Awda Hospital in Jabalia, hitting its specialized surgery department, water and fuel tanks, outpatient buildings and a medicines warehouse, which caught fire while crews were reportedly prevented from reaching the site.²⁵⁰ Israeli forces then ordered and carried out the evacuation of the remaining 97 people inside the hospital, including 13 patients and 84 staff, on 29 May 2025, effectively shutting down the last functioning hospital in northern Gaza and cutting pregnant women in the area off from any realistic access to facility-based maternity care.²⁵¹

Under IHL, hospitals are protected objects and enjoy special protection. GC IV requires that civilian hospitals be respected and protected at all times, and it provides that protection may be lost only in the exceptional case where a hospital is used to commit “acts harmful to the enemy”, and only after a warning has been given, with a reasonable time limit, and ignored.²⁵² The treaties do not define “acts harmful to the enemy” exhaustively, but they make clear that the threshold is not met by ordinary security measures, including the presence of small arms taken from the wounded and sick and not yet handed to the proper authorities, or the fact that wounded combatants are being treated.²⁵³ The protection of medical units is also recognized in customary IHL and is reflected in the rules on distinction, proportionality and precautions in attack which are regarded as customary law.²⁵⁴ Al-Awda was a clearly identified, functioning civilian hospital, with Médecins Sans Frontières stressing that it had repeatedly informed “warring parties” of al-Awda’s status as a functioning hospital and had shared the hospital’s GPS coordinates with Israeli authorities the day before the November 21 airstrike.²⁵⁵

Despite repeatedly attacking and ultimately forcing the closure of al-Awda Hospital, Israel has not publicly alleged that the hospital itself was being used for military purposes, qualified as a military objective under IHL, or offered any specific operational justification for these strikes.²⁵⁶ The hospital has not indicated that any warning was given and ignored. While Israel has designated the precursor

²⁴⁷ Independent International Commission of Inquiry, “*More than a human can bear*” (13 March 2025) at 9.

²⁴⁸ *Ibid.*

²⁴⁹ *Ibid.*

²⁵⁰ Palestinian Centre for Human Rights, “*Al-Awda Hospital Bombed: Israeli Occupation Forces Bomb Last Functioning Hospital in Northern Gaza...*” (22 May 2025), online: PCHR.

²⁵¹ Léonie Chao-Fong, Maya Yang, Tom Ambrose & Daniel Lavelle, “*IDF carries out forced evacuation of al-Awda hospital in northern Gaza, officials say – as it happened*” (29 May 2025), online: *The Guardian*.

²⁵² Robert Kolb & Fumiko Nakashima, “The notion of ‘acts harmful to the enemy’ under international humanitarian law” (2019) 101(912) *International Review of the Red Cross* 1171 at 1180, 1187-1188; GC IV, 18-19.

²⁵³ Robert Kolb & Fumiko Nakashima, “The notion of ‘acts harmful to the enemy’ under international humanitarian law” (2019) 101(912) *International Review of the Red Cross* 1185, 1188; GC IV, 19.

²⁵⁴ ICRC, Rules 1 (Distinction between civilians and combatants), 7 (Distinction between civilian objects and military objectives), 14 (Proportionality in attack) and 15–21 (Precautions in attack).

²⁵⁵ Doctors Without Borders/Médecins Sans Frontières, “*MSF doctors killed in strike on Al-Awda hospital in northern Gaza, Palestine*” (21 November 2023), online: MSF.

²⁵⁶ Office of the United Nations High Commissioner for Human Rights, *Thematic Report: Attacks on Hospitals During the Escalation of Hostilities in Gaza (7 October 2023 – 30 June 2024)* (31 December 2024), online: OHCHR at para 15.

organization to al-Awda’s managing NGO as a “terrorist” or “unlawful” organization under its domestic law, it has not linked that designation to any concrete explanation for the attacks on al-Awda.²⁵⁷ The destruction and closure of the only functioning maternity hospital in northern Gaza entailed profound consequences for civilians relying on maternity and neonatal services, by removing the only local capacity for deliveries, caesarean sections, and neonatal care and interferes with a range of rights, including the right to life; the right to health; and the specific rights of children under the CRC.²⁵⁸ Through these attacks, pregnant people, newborns and children are left without viable access to care that is necessary for survival. The closure of al-Awda also must be understood cumulatively, because repeated damage and disruption across Gaza’s hospitals and health facilities has steadily stripped away the remaining capacity for maternity and neonatal care.²⁵⁹

IHL treats patients and other persons receiving medical care as civilians, and they retain that protection unless, and for such time as, they take a direct part in hostilities.²⁶⁰ Separately, the wounded and sick – which includes combatants and rebels/.fighters - are entitled to specific protection and respect, and must not be attacked, harmed, or left without the medical care required by their condition.²⁶¹ Medical personnel are also specially protected while carrying out medical duties, and their work must be respected and facilitated.²⁶² However, at al-Awda, doctors and other medical personnel were killed and injured in direct strikes on the hospital. A surgeon was shot by a sniper while working inside the building during the December 2023 siege, and the pregnant woman discussed earlier who was shot was left to die as no one could safely reach her due to sniper fire and the surrounding siege.²⁶³ There is no information publicly available that indicates these individuals were directly participating in hostilities at the time.²⁶⁴ Killing and injuring medical staff, patients, and the wounded and sick therefore violates the protections owed to civilians and medical personnel under the Geneva Conventions and customary IHL and can be characterized as unlawful attacks on civilians and on the protected medical personnel.²⁶⁵ Given al-Awda’s role as the main maternity and obstetric hospital in northern Gaza, these unlawful attacks also have a specifically gendered and reproductive dimension, since they disproportionately endanger pregnant people, newborns and those seeking maternal and neonatal care.

This broader disregard for medical units and personnel and reproductive healthcare is further illustrated by Israel’s strike on the Al Basma IVF Centre, which resulted in the destruction of thousands of

²⁵⁷ Diakonia International Humanitarian Law Centre, *Legal Analysis of the Destruction of Healthcare in North Gaza* (April 2025), online: *Diakonia IHL Centre* at 38.

²⁵⁸ ICCPR, art 6; ICESCR, art 12(2)(a); CEDAW, art 12; CRC, art 24.

²⁵⁹ World Health Organization, *oPt Emergency Situation Update, Issue 37, 7 October 2023 to 22 July 2024* (22 July 2024) at 1, online: WHO; World Health Organization, *WHO Month of Operations Update, July to August 2025* (2025) at 4, online: WHO.

²⁶⁰ AP I, arts 50(1), 51(3); ICRC, Rule 6.

²⁶¹ GC IV, art 16; ICRC Rules 109-110.

²⁶² AP I 51(3), ICRC, Rules 6, 25.

²⁶³ UN General Assembly, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, UN Doc A/79/232 (11 September 2024) at para 25; Médecins Sans Frontières, “Northern Gaza: MSF surgeon injured in Al-Awda hospital” (11 December 2023), online: *MSF*.

²⁶⁴ Médecins Sans Frontières, “Northern Gaza: MSF surgeon injured in Al-Awda hospital” (11 December 2023).

²⁶⁵ ICRC, Rule 6, 25, 110.

embryos.²⁶⁶ According to the United Nations, Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel (UN CoI OPT) the damage was likely caused by a large-caliber shell fired from an Israeli tank, and satellite imagery confirmed widespread destruction in the surrounding area.²⁶⁷ The clinic, a clearly marked and standalone medical facility, showed no signs of military use.²⁶⁸ In response to media inquiries, the Israeli military stated it was reviewing the specific strike, denied targeting civilian infrastructure, and reiterated claims that Hamas operates from Gaza's medical facilities.²⁶⁹ However, the UN CoI OPT found no evidence of Israel's claims and reported that it was reasonable to conclude that Israeli forces knew the function of the clinic and intended to destroy the reproductive material stored there.²⁷⁰ As of January 2025, no assisted reproductive services remained available in Gaza.²⁷¹ Under IHL, this attack appears to constitute an unlawful direct attack on a medical facility, contrary to GC IV Article 18 requiring the protection and respect of civilian hospitals, and may amount to a grave breach under Article 147.²⁷²

The missile strike that demolished Al Basma, also destroyed all stored embryos and gametes, and therefore this attack is also one against civilian objects.²⁷³ This attack has profound consequences for Palestinian couples struggling with infertility as over 4,000 embryos, along with an additional 1,000 specimens of sperm and unfertilized eggs were destroyed.²⁷⁴ Dr. Bahaeldeen Ghalayini, the clinic's founder and the doctor responsible for its IVF services stated that "At least half of the couples — those who can no longer produce sperm or eggs to make viable embryos — will not have another chance to get pregnant."²⁷⁵ The destruction of the IVF clinic constitutes a clear violation of reproductive rights as it removed any practical possibility for many infertile individuals and couples to pursue parenthood, extinguishing existing reproductive paths to parenthood and undermining core elements of reproductive justice. Under CEDAW Article 16(1)(e), individuals have the right to decide freely and responsibly on the number and spacing of their children and to have access to the means necessary to exercise this right.²⁷⁶ The deliberate destruction of Gaza's only IVF facility eradicated the region's option for individuals and couples facing infertility to exercise their reproductive rights, effectively denying them the autonomy to pursue parenthood and expand their families. Considering contemporary medical practice, the law of occupation offers a basis to treat fertility care as part of the protected health and family life of civilians. Article 27 of the GC IV safeguards family rights, and Article 56 requires the occupying power to maintain medical and hospital services and public health and hygiene.²⁷⁷ Given the increasing reliance on assisted

²⁶⁶ Independent International Commission of Inquiry, "More than a human can bear" (13 March 2025) at para 41.

²⁶⁷ *Ibid* at para 42.

²⁶⁸ *Ibid*.

²⁶⁹ Saleh Salem, Imad Creidi & Andrew Mills, "Gaza's IVF Embryos Destroyed by Israeli Strike" *Reuters* (17 April 2024).

²⁷⁰ Independent International Commission of Inquiry, "More than a human can bear" (13 March 2025) at para 42.

²⁷¹ *Ibid*.

²⁷² GC IV, arts 18, 147.

²⁷³ ICRC, Rule 7.

²⁷⁴ Mustafa Aziz, "The Israeli Genocide in Gaza Targets Foetuses, Newborns and Pregnant Women" *Middle East Monitor* (17 April 2025).

²⁷⁵ Saleh Salem, Imad Creidi & Andrew Mills, "Gaza's IVF embryos destroyed by Israeli strike" (17 April 2024), online: *Reuters*.

²⁷⁶ CEDAW, art 16(1)(e).

²⁷⁷ GC IV, arts 27, 56.

reproductive technologies, a modern interpretation of these provisions should expressly recognize fertility care and IVF services as integral to civilian health and family life.

The attacks on al-Awda and Al Basma show how Israel's conduct toward Gaza's health system has moved beyond incidental damage to civilian objects and into the deliberate targeting and destruction of life-sustaining infrastructure that is central to reproductive autonomy and family life. The destruction and closure of the only maternity hospital in northern Gaza, the killing and intimidation of medical staff and patients, and the targeted elimination of Gaza's sole IVF clinic all point to a pattern in which key sites of pregnancy, birth and fertility are treated as expendable or suspect rather than as specially protected. In legal terms, this pattern is difficult to reconcile with the protections for medical units, civilians and objects indispensable to survival under Geneva Convention IV and customary IHL, or with the guarantees of life, health and reproductive choice in IHRL.²⁷⁸ In reproductive justice terms, it means that Palestinians in Gaza are denied not only safe care in pregnancy and childbirth, but also the ability to decide whether and when to have children and to raise children in a safe and healthy environment. This section therefore shows how civilian harm and the destruction of life-sustaining infrastructure function as forms of reproductive violence that are structurally embedded in the conduct of the hostilities and lays the groundwork for the following chapter's discussion of how these practices intersect with the prohibition of genocide under international law.

2.5 Displacement

Compounding the effects of aid blockades and repeated attacks against hospitals, medical facilities and medical personnel, Israel's evacuation orders have resulted in mass displacement on multiple occasions. By the end of 2024, 86 percent of Gaza was subject to evacuation directives, uprooting hundreds of thousands of people from their homes.²⁷⁹ On October 13, 2023, the Israeli military issued an evacuation order for over one million residents of northern Gaza, instructing them to relocate to the southern part of the region within 24 hours.²⁸⁰ Under IHL, displacement of civilians is prohibited except in narrow circumstances, and it is unlawful where civilians are compelled to move through coercive conditions and without safeguards that permit survival.²⁸¹ On this view, the evacuation order risks amounting to forcible transfer, which may constitute a war crime under ICL, because it compels movement through coercive circumstances rather than through genuine voluntary relocation.²⁸² The UN further stressed that the decision was forcing Palestinians to choose between remaining under bombardment in the north or undertaking a dangerous journey on foot through active hostilities with no

²⁷⁸ GC IV, arts 55-56; ICESCR arts 11-12; ICCPR art 6; CRC art 24.

²⁷⁹ UN OCHA, *Humanitarian Situation Update #206: Gaza Strip*, online: (4 June 2024).

²⁸⁰ HRW, *Hopeless, Starving, and Besieged*, (Nov 2024) at 4-5; UN Human Rights Council, *Detailed findings on the military operations and attacks carried out in the Occupied Palestinian Territory from 7 October to 31 December 2023*; Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, UN Doc A/HRC/56/CRP.4 (10 June 2024) at paras 93-96.

²⁸¹ Henckaerts & Doswald-Beck, *Customary International Humanitarian Law*, vol I (CUP, 2005) 461, Rule 129; 463-64, Rule 131; GC IV, art 49.

²⁸² Norwegian Refugee Council, *Mass Evacuation in Gaza Could Amount to War Crime*. 13 October 2023.

assurance of shelter, food, water or medical care in the areas to which they were told to flee.²⁸³ This call for evacuation is only one of many, as, of mid-2025, at least 219 formal evacuation orders have been documented by human rights organizations since October 7.²⁸⁴ This figure represents a minimum, as many additional warnings were delivered through informal avenues.²⁸⁵ Israel has characterized these measures as temporary and necessary for the security of civilians, yet bombardment continued along evacuation routes and in designated “safe zones” in the south, and no concrete guarantees of return, safety or adequate living conditions were provided.²⁸⁶

Under IHL, the forced displacement of civilians from occupied territory is prohibited except where it is “absolutely necessary” for the security of the civilians involved or for “imperative military reasons”, and even then, only on a temporary basis and with adequate conditions and the prospect of return, as reflected in Geneva Convention IV article 49 and customary rule 129.²⁸⁷ As an exception to the general prohibition, these must be interpreted narrowly and in accordance with the object and purpose of such provisions.²⁸⁸ Moreover, any such evacuation must be carried out with due regard for the safety, shelter, health and nutrition of civilians, consistent with customary rule 131.²⁸⁹ These obligations tied to evacuations are generally understood as exceptionally narrow, with the burden resting on the occupying power to demonstrate that they are genuinely met.²⁹⁰ The 1907 Hague Regulations also impose obligations on occupying powers, with Article 43 requiring the maintenance of public order and civil life, and Article 46 mandating respect for family life and private property.²⁹¹ On the information publicly available, the October 13 evacuation order falls far short of these standards. Evacuation was effectively impossible for 1.1 million people within 24 hours, and civilians were ordered to move without any clarity on securing basic needs.²⁹² Furthermore Israel presented the evacuation as a protective measure “for their safety” while repeatedly shifting the location of the designated “humanitarian aid zone” at least four times between 13 and 30 October, only identifying al-Mawasi on 18 October.²⁹³ In this circumstance, the

²⁸³ “WHO pleads for immediate reversal of Gaza evacuation order to protect health and reduce suffering” (13 October 2023), online: *WHO*.

²⁸⁴ HRW, *Hopeless, Starving, and Besieged*, (Nov 2024) at 16; OHCHR, *Gaza: Increasing Israeli evacuation orders lead to forcible transfer*, (11 April 2025).

²⁸⁵ HRW, *Hopeless, Starving, and Besieged*, (Nov 2024) at 16.

²⁸⁶ UN Office of the High Commissioner for Human Rights, “*Gaza: Increasing Israeli ‘evacuation orders’ lead to forcible transfer of Palestinians*” (11 April 2025); Reuters, “Israel flouting international law with forced evacuations in Gaza, UN says” (28 March 2025), online: *Reuters*.

²⁸⁷ GC IV, art 49; ICRC, Rule 129.

²⁸⁸ VCLT, art 31

²⁸⁹ ICRC, Rule 131.

²⁹⁰ Claire Simmons, *Displacement in Armed Conflict and the Protection of Civilians* (Washington, DC: Center for Civilians in Conflict (CIVIC), August 2023) at 9.

²⁹¹ Hague Regulations, arts 43, 46.

²⁹² HRW, *Hopeless, Starving, and Besieged*, (Nov 2024) at 4-5.

²⁹³ UN Human Rights Council, *Detailed findings on the military operations and attacks carried out in the Occupied Palestinian Territory from 7 October to 31 December 2023*, Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, UN Doc A/HRC/56/CRP.4 (10 June 2024) at paras 93–96.

October 13 order and subsequent mass displacement likely amount to unlawful forcible transfer rather than lawful evacuation within the narrow exceptions allowed by GC IV Article 49 and customary IHL.²⁹⁴

A second pivotal incident is the May 2024 evacuation and ground offensive in Rafah, which unfolded after Rafah had become the main refuge in Gaza, sheltering around 1.4–1.5 million displaced Palestinians in an already overcrowded southern corner of the Strip.²⁹⁵ In early May, Israel ordered large parts of Rafah to evacuate toward areas such as Al-Mawasi and Deir al-Balah and moved forward with ground operations while seizing and closing the Rafah crossing with Egypt.²⁹⁶ Closing the Rafah crossing while simultaneously ordering mass evacuation from the city also undercuts Israel's obligations under the GC IV to permit and facilitate relief for civilians in need reflected in article 70 of Additional Protocol I.²⁹⁷ The United Nations Population Fund (UNFPA) warned that a Rafah offensive would be “a catastrophe” for traumatized pregnant women and new mothers and would gravely disrupt humanitarian operations.²⁹⁸ By 22 May 2024, UNFPA reported that around 18,500 pregnant women had already fled Rafah to Al-Mawasi and Deir al-Balah, where access to maternal healthcare was described as “minimal,” and that vital maternal and reproductive health supplies across Gaza were critically low.²⁹⁹

The UN has already questioned whether Israel's evacuation orders in Rafah satisfy these narrow exceptions, describing the orders as “inhumane,” warning they may amount to a war crime of forcible transfer, and stressing that the remaining areas in Gaza lack the infrastructure to support further displaced populations.³⁰⁰ Additionally, by ordering civilians to move from Rafah into areas that UN agencies had already identified as unable to sustain further arrivals, with minimal shelter, services and protection, Israel failed to ensure that displacement was carried out in conditions compatible with the safety, health and survival of the population, as required by Geneva Convention IV and the customary rules on the treatment of displaced civilians.³⁰¹

The Rafah offensive and associated evacuation orders had particularly severe effects on pregnant women, postpartum mothers and newborns. At the time, UNFPA estimated that tens of thousands of pregnant women and new mothers across Gaza were struggling to survive and access basic health care, with many giving birth in tents or makeshift shelters.³⁰² For the 18,500 pregnant women forced to leave

²⁹⁴ Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, *Detailed Findings on the Military Operations and Attacks Carried out in the Occupied Palestinian Territory from 7 October to 31 December 2023*, UNHRC, 56th Sess, UN Doc A/HRC/56/CRP.4 (10 June 2024) at paras 145–146, 439–440; GC IV, art 49.

²⁹⁵ United Nations Human Rights Office of the High Commissioner (Special Procedures), “Israel's Rafah invasion must stop now, say UN experts” (10 May 2024), online: *OHCHR*.

²⁹⁶ Nidal Al-Mughrabi & May Angel, “Israel orders Palestinians to evacuate from more areas of Gaza's Rafah” (11 May 2024), online: *Reuters*; United Nations Human Rights Office of the High Commissioner (Special Procedures), “Israel's Rafah invasion must stop now, say UN experts” (10 May 2024).

²⁹⁷ AP I 70.

²⁹⁸ United Nations Population Fund, “Statement from UNFPA Executive Director Dr Natalia Kanem on the potential invasion in Rafah” (5 May 2024), online: *UNFPA*.

²⁹⁹ United Nations Population Fund, *UNFPA Palestine Situation Report, Issue #8* (22 May 2024) online (pdf): *UNFPA*.

³⁰⁰ Office of the United Nations High Commissioner for Human Rights, “Israel/Occupied Palestinian Territory: Rafah threat is inhumane, says UN Human Rights Chief” (6 May 2024), online: *OHCHR*.

³⁰¹ Office of the United Nations High Commissioner for Human Rights, “Israel/Occupied Palestinian Territory: Rafah threat is inhumane, says UN Human Rights Chief” (6 May 2024); GC IV, art 49; ICRC Rule 131.

³⁰² UNFPA, “Gaza is at breaking point”: Health workers and patients describe an unfolding catastrophe in Rafah” (14 March 2024), online: *UNFPA*.

Rafah, the move meant losing access to one of the last functioning maternity hubs and being pushed into areas where maternal health services were largely unavailable.³⁰³ The journey itself, often undertaken on foot or in overcrowded vehicles under bombardment and without food, water or medical assistance, increased the risk of miscarriage, preterm birth and maternal complications.³⁰⁴ Under IHRL, the pattern of forced and repeated displacement engages multiple treaty obligations. The clearest impacts arise under the ICCPR, through interference with liberty of movement and protection of family life.³⁰⁵ It also engages the ICESCR because repeated uprooting foreseeably erodes access to basic necessities and the material conditions required to meet minimum core obligations.³⁰⁶ Under CEDAW and the CRC, the same pattern has distinct consequences for women and children, by destabilizing care, safety, and continuity at precisely the stages where pregnancy, birth, and child development depend on stability and support.³⁰⁷ In practice, the repeated movements uproot families, separate relatives, and prevent any stable, safe, and healthy environment in which to carry and raise children.³⁰⁸

2.6 Conclusion

The three pillars examined in this chapter denial and obstruction of aid, attacks on civilians and life-sustaining infrastructure, and displacement show a consistent pattern in which the conditions needed for pregnancy, birth and early childhood in Gaza are being systematically dismantled rather than carefully protected. The practices analyzed here starvation tactics, deliberate obstruction of food and medical supplies, repeated evacuation orders into areas without services, and attacks on hospitals and fertility care fall most heavily on pregnant women, newborns and children. In practice, they target the places and resources that make reproduction and child-rearing possible maternity wards, IVF services, incubators, food, clean water and safe shelter.

In legal terms, these patterns are at odds with core protections in IHL and IHRL. They clash with the prohibition on starvation of civilians as a method of warfare and with the duties of an occupying power under GC IV to ensure food, medical supplies and public health and to permit and facilitate impartial relief. The mass evacuation orders from northern Gaza and Rafah do not meet the narrow conditions for lawful evacuation, since they have been accompanied by bombardment of routes and supposed safe areas and by a lack of adequate shelter, food, water, healthcare and guarantees of return, and they therefore

³⁰³ United Nations Population Fund, *UNFPA Palestine Situation Report, Issue #8* (22 May 2024).

³⁰⁴ HRW, *Five Babies in One Incubator* (Jan 2025) at 25, 29-32.

³⁰⁵ UN Human Rights Committee, General Comment No 27, *Freedom of Movement (Article 12)*, UNHRCOR, 67th Sess, UN Doc CCPR/C/21/Rev.1/Add.9 (1999) at para 7; UN Human Rights Committee, General Comment No 16, *Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation* (8 April 1988) at paras 1, 5.

³⁰⁶ UN Committee on Economic, Social and Cultural Rights, General Comment No 7, *The Right to Adequate Housing (Article 11(1)): Forced Evictions*, UNESCOR, 16th Sess, UN Doc E/1998/22 (20 May 1997) at paras 4, 16; UN Committee on Economic, Social and Cultural Rights, General Comment No 3, *The Nature of States Parties' Obligations (Article 2(1))* (14 December 1990) at para 10.

³⁰⁷ UN Committee on the Elimination of Discrimination against Women, General Recommendation No 30, *Women in Conflict Prevention, Conflict and Post Conflict Situations*, UN Doc CEDAW/C/GC/30 (18 October 2013) at paras 38–39, 52–53; UN Committee on the Rights of the Child, General Comment No 7, *Implementing Child Rights in Early Childhood*, UN Doc CRC/C/GC/7/Rev.1 (20 September 2006) at paras 6, 18–20.

³⁰⁸ ICCPR, arts 12, 17.

support the view that Palestinians in Gaza have been subjected to unlawful forcible transfer. Attacks on al-Awda Hospital, the Al Basma IVF Centre and other facilities conflict with the special protection owed to medical units, medical personnel and the wounded and sick and with the rules of distinction, proportionality and precautions in attack, and evidence from the UN Commission of Inquiry indicates that the resulting reproductive harms were foreseeable and left unremedied rather than incidental.

From a human rights and reproductive justice perspective, this means that Palestinians in Gaza are denied core elements of reproductive justice: the right to have children and to raise them in a safe and healthy environment. In the short term, this is visible in rising miscarriages, preterm births, maternal deaths and infant malnutrition and in the destruction of the only IVF clinic. In the longer term, famine, untreated medical conditions and the loss of reproductive material are likely to affect future fertility and shorten reproductive lifespans for many survivors. The fact that the heaviest burdens fall on women, pregnant people and children and on spaces of pregnancy, birth and fertility strengthens concerns that the reproductive capacity of Palestinians in Gaza is being systematically constrained rather than incidentally harmed. This chapter has shown how denial and obstruction of aid, civilian harm including attacks on life sustaining infrastructure, and displacement operate as forms of reproductive violence and leads directly to the next chapter's examination of how these practices relate to the crime of genocide, specifically, measures intended to prevent births within a protected group.

Chapter Three: Responsibility and Accountability in Preventing and Punishing Internationally Wrongful Acts: The Case of Genocide in Gaza

3.1 Introduction

Under international law, genocide is not limited to causing mass death and harm, but also includes measures aimed at destroying a group's ability to exist the future. Article II(d) of the *Convention on the Prevention and Punishment of the Crime of Genocide* identifies 'imposing measures intended to prevent births within the group' as a method that may constitute genocide when carried out with the intent to destroy a group, whether in whole or in part.³⁰⁹ In the context of Gaza, prolonged bombardment has been accompanied by the systematic destruction of reproductive health infrastructure, widespread displacement, and the deliberate denial of access to essential goods and services.³¹⁰ These conditions have created an environment in which Palestinian women increasingly cannot carry pregnancies safely, give birth with medical support, or access postnatal care. Although IHL and IHRL aim to protect civilian life and uphold human dignity, since October 7, 2023, Israel has demonstrated persistent non-compliance for both legal frameworks in Gaza. The human rights-based vision of reproductive justice cannot take root under the conditions of Israel's occupation. However, Israel's conduct since October 7 has gone beyond its preexisting practices, unfolding in a sustained pattern that undermines the remaining conditions needed for reproduction in Gaza.

Reproductive justice affirms not only the right to have children or not have children, but also the right to raise children in a safe and healthy environment.³¹¹ This concept recognizes that the ability to bring life into the world is deeply interconnected with the structural conditions that make survival and caregiving possible, including access to healthcare, housing, nutrition, clean water, education, and protection from violence.³¹² The Genocide Convention, particularly through Article II(d), prohibits acts intended to prevent births within a group.³¹³ When state actions or military policies systematically obstruct access to maternal care, render pregnancies unviable, or expose children to lethal conditions, those actions violate both the principles of reproductive justice and the legal prohibition against genocide.³¹⁴ In this sense, reproductive oppression under conditions of violence and deprivation can operate as a means of group destruction, and it directly engages the Convention's core protective purpose.

³⁰⁹ *Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948, 78 UNTS 277, art II(d).

³¹⁰ HRW, *Hopeless, Starving, and Besieged*, (Nov 2024) at 26.

³¹¹ Committee on Economic, Social and Cultural Rights, *General Comment No 14* (11 August 2000) at para 14; Onwuachi-Saunders, Dang & Murray, "Reproductive Rights, Reproductive Justice" at 23.

³¹² Onwuachi-Saunders, Dang & Murray, "Reproductive Rights, Reproductive Justice" at 23.

³¹³ *Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948, 78 UNTS 277, art II(d).

³¹⁴ Ross, "Reproductive Justice as Intersectional Feminist Activism" at 292; *Convention on the Prevention and Punishment of the Crime of Genocide*, art II(d); Independent International Commission of Inquiry, "More than a human can bear" (13 March 2025) at paras 176-178, 218-219.

As stated by Francesca Albanese, the UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, genocide is a process, not an act.³¹⁵ In this chapter, I will connect the events and policies outlined in the previous chapters to demonstrate Israel's ongoing violations of IHRL and IHL, and to explain how these measures amount to genocide pursuant to the Genocide Convention. I will support this argument by analyzing statements from Israeli officials that reflect genocidal rhetoric, including language that can reasonably be interpreted as encouraging or legitimizing acts intended to prevent births in Gaza. To reinforce these points, I will draw on the work of UN experts, legal findings from previous genocide cases, insights from the ongoing *South Africa v Israel* proceedings at the ICJ, and analyses from other legal and academic experts.

Together, these sources will provide a foundation for the argument that Israel is undertaking actions with intent to prevent births in Gaza, consistent with one of the acts of genocide as defined under international law. I will then turn to the duties of third states in response to the State of Israel's conduct in Gaza, particular focus on Canada as a case study. This analysis treats the relevant conduct as attributable to Israel under international law, rather than focusing on the actions of individual officials and individual criminal liability under international criminal law. In the final section, I will assess what other states, particularly Canada must do to prevent genocide and support accountability, including the measures third states should take to ensure their own policies, diplomatic positions, and arms transfer decisions do not undermine their international obligations.

3.2 The Legal Framework of Genocide

As stated in the Convention, genocide constitutes any of the acts under Article II that are committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group.³¹⁶ For this analysis, I will be examining Israel's conduct regarding Article II(d), as the right to have children, and, and the right to raise children in a safe and healthy environment are two of the three pillars of the reproductive justice framework, and Israel's conduct has gravely impacted many of the structural conditions that make these parts of the framework possible. This analysis adopts a gendered lens in assessing how Article II(d) of the Genocide Convention is being violated.

To establish the crime of genocide under Article II(d), it must be shown that there is a general intent to carry out the relevant acts (*dolus generalis*) and that they are carried out with the specific intent to destroy the group, in whole or in part (*dolus specialis*).³¹⁷ This analysis considers evidence of intent through three interrelated factors: dehumanizing rhetoric by state officials, the destruction or disabling of reproductive services, and the deprivation of food, water, and shelter necessary for maternal health. When viewed together, these elements raise serious legal concerns about whether Israel's conduct in Gaza amounts to the imposition of measures designed to prevent Palestinian births, thereby fulfilling one of the core elements of genocidal conduct under international law. Genocide does not require that the intended destruction be achieved, but it does require the commission of at least one of the prohibited

³¹⁵ *Anatomy of a Genocide*, HRC, 55th sess, A/HRC/55/73 (2024) Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, para 8.

³¹⁶ *Convention on the Prevention and Punishment of the Crime of Genocide*, art II.

³¹⁷ *Prosecutor v Akayesu*, ICTR 96 4 T (2 September 1998) at paras 498-499.

acts with genocidal intent.³¹⁸ It requires intent.³¹⁹ In this context, the question is whether a pattern of conduct demonstrates an intention to prevent births.

As the ICJ stated in *Bosnia v. Serbia*, “for a pattern of conduct to be accepted as evidence of the existence [of specific intent], it would have to be such that it could only point to the existence of such intent.”³²⁰ This was further clarified in *Croatia v. Serbia*, where the Court emphasized that “it is necessary and sufficient that this is the only inference that could reasonably be drawn from the acts in question.”³²¹ This standard is often referred to as the ‘only reasonable inference’ test.³²² It is important to understand that to prove genocide, intent must be established through a reasonably drawn inference.³²³ However, the Court explained in *Bosnia v. Serbia* that “[t]he specific intent is also to be distinguished from other reasons or motives the perpetrator may have.”³²⁴ Therefore, even if a perpetrator has multiple motives, a clear pattern of conduct pointing to genocidal intent can still meet the legal threshold.

Under Article II of the Genocide Convention, the crime of genocide must be committed against a protected group, defined as a national, ethnical, racial, or religious group.³²⁵ The definition of such a group has evolved in international jurisprudence through both objective and subjective approaches. The International Criminal Tribunal for Rwanda (ICTR) did not adopt a purely subjective test. In *Akayesu*, it referred to the Convention as protecting relatively “stable and permanent” groups, but later ICTR case law treated group identification more flexibly, considering both objective characteristics and the ways in which perpetrators and victims understood the group in question.³²⁶ This approach recognizes that protected group status cannot always be determined by fixed traits alone, while still requiring more than a purely negative or purely subjective classification.

In contrast, the International Court of Justice (ICJ) in *Bosnia v. Serbia* applied a predominantly objective approach, emphasizing positive identification of the targeted group.³²⁷ It rejected negative or residual definitions such as ‘non Serbs,’ and concluded that the Bosnian Muslims constituted a protected group based on national and religious characteristics.³²⁸ Instead, it emphasized that Bosnian Muslims formed a distinct community, identifiable by their own positive attributes.³²⁹ This was consistent with the object and purpose of the Genocide Convention, which seeks to protect objectively identifiable groups.³³⁰

One argument advanced in response is that Israel’s operations are directed only at Hamas, and that Hamas is not a protected group under the Convention on the Prevention and Punishment of the

³¹⁸ *Convention on the Prevention and Punishment of the Crime of Genocide*, art II.

³¹⁹ *Ibid.*

³²⁰ *Bosnia v Serbia*, at para 373.

³²¹ *Croatia v Serbia*, [2015] ICJ Rep 3 at para 148.

³²² *South Africa v Israel*, Declaration of Intervention of Ireland (6 January 2025) at para 37.

³²³ *Croatia v Serbia*, at para 148.

³²⁴ *Bosnia v Serbia*, at para 189.

³²⁵ *Convention on the Prevention and Punishment of the Crime of Genocide*, art II.

³²⁶ *Prosecutor v Akayesu*, at paras 511-515; *Prosecutor v Kayishema and Ruzindana* (Judgment) (Case No ICTR-95-1-T) (21 May 1999) at paras 97–98.

³²⁷ *Bosnia v Serbia*, para 194.

³²⁸ *Ibid* at para 196.

³²⁹ *Ibid* at para 196.

³³⁰ *Ibid* at para 197.

Crime of Genocide.³³¹ That position, however, does not resolve the legal test for identifying the protected group. As the International Court of Justice stressed in *Bosnia and Herzegovina v Serbia and Montenegro*, the analysis turns on the positive identification of the targeted group, and it cannot be displaced by how the objective is framed.³³² Where the pattern of conduct shows violence and deprivation directed at civilian Palestinians as such, and not only at combatants or fighters, the relevant protected group remains the national group.³³³ Rhetoric that treats the civilian population as coextensive with Hamas does not change the protected group analysis. It functions as a proxy label that obscures the objective identity of Palestinians as a national group.³³⁴

Applying either approach to Palestinians affirms their status as a protected group under the Genocide Convention. Objectively, Palestinians constitute a national group bound by shared language, history, culture and identity.³³⁵ Subjectively, Israeli political rhetoric and conduct increasingly depict Palestinians as a singular, undifferentiated population. This perception is evident in statements such as Israeli Minister Bezalel Smotrich's call for Palestinians to "leave in great numbers to third countries," which treats Palestinians as a collectively identifiable population capable of removal as a group rather than as a set of individuals differentiated by personal circumstance.³³⁶ Such expressions of collective targeting meet the threshold in *Akayesu* for subjective group recognition.

UN Special Rapporteur Francesca Albanese, in her 2024 report *Anatomy of a Genocide*, analyzes patterns of conduct and policy that suggest Palestinians in Gaza are targeted as a national group, noting that their identity has been framed in a way that renders them destroyable.³³⁷ This is further supported by the International Court of Justice in *South Africa v. Israel*, which recognized that Palestinians in Gaza constitute a substantial part of a protected group and found that at least some of the rights South Africa invoked, specifically protection from acts of genocide, were plausible.³³⁸ Together, these legal foundations, including objective group identity, the perception of Palestinians as a collective, and authoritative findings, solidify the basis for treating Palestinians as a protected group under the Genocide Convention.

The International Court of Justice (ICJ) and the International Criminal Court (ICC) can both address allegations of genocide, but they do so through different frameworks.³³⁹ For the purpose of this analysis, I focus on state responsibility rather than individual criminal responsibility, and therefore on the ICJ. This

³³¹ Israel Defense Forces, "Press Briefing by IDF Spokesperson Rear Admiral Daniel Hagari, November 5th, 15:45" (5 November 2023), online: *IDF*; Israel Ministry of Foreign Affairs, "Selective Use of Facts and the Gaza Genocide Debate" (2 January 2024), online: Government of Israel.

³³² *Bosnia v Serbia*, paras 191, 193, 196; Sandesh Sivakumaran, "Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)" (2007) 56:3 *International and Comparative Law Quarterly* 695 at 697.

³³³ *Bosnia v Serbia*, paras 191, 193, 196; Sivakumaran, "Application of the Convention" (2007) 56:3 *ICLQ* 695 at 697.

³³⁴ *Bosnia v Serbia*, paras 191, 193, 196; Donald Bloxham, "The 7 October Atrocities and the Annihilation of Gaza: Causes and Responsibilities" (3 April 2025) *Journal of Genocide Research* 1 at 19, 21.

³³⁵ GA Res 3236 (XXIX), UNGAOR, 29th sess, UN Doc A/RES/3236(XXIX) (1974) (reaffirming the inalienable rights of the Palestinian people, including self-determination and national independence and sovereignty).

³³⁶ Times of Israel, "Security cabinet says Israel will destroy military, governmental abilities of Hamas, Islamic Jihad" (8 October 2023).

³³⁷ *Anatomy of a Genocide*, UNHRC, 55th sess, UN Doc A/HRC/55/73 (2024) at paras 12 and 13.

³³⁸ *South Africa v Israel*, [2024] ICJ Rep 3, (26 January 2024) at paras 45 to 49.

³³⁹ *Rome Statute of the International Criminal Court*, 17 July 1998, 2187 UNTS 90, arts 5(1)(a), 6, 12 to 13.

is particularly relevant to the ongoing case of *South Africa v. Israel*, where on December 29, 2023, South Africa instituted proceedings against Israel, alleging that the state is violating its obligations under the Genocide Convention through its conduct in Gaza.³⁴⁰ Article IX expressly permits any state to bring another state before the ICJ for the ‘responsibility of a State for genocide.’³⁴¹ The Court examines whether a state has violated its obligations, including the duties to prevent and punish genocide, and it can issue binding judgments and orders.³⁴² This state focused pathway allows the Court to access compliance with the convention without making findings about the criminal liability of specific individuals.

To date, the ICJ has never found a state responsible for genocide. Such a finding requires proof of ‘intent to destroy’ a protected group as the only possible inference, and attribution of that intent to the state.³⁴³ Intent was proven in *Bosnia v. Serbia*, though attribution was not.³⁴⁴ The ICJ affirmed that the massacre at Srebrenica in July 1995 constituted genocide under Article II of the Genocide Convention.³⁴⁵ The ICJ held that the specific intent to destroy, in part, the Bosniak group was established, as evidenced by the scale and systematic nature of the killings and the deliberate targeting of the group’s male population and leadership.³⁴⁶ Instead, the genocide at Srebrenica was attributed to individuals within the Bosnian Serb leadership and military, specifically members of the Army of the Republika Srpska (VRS) and other Republika Srpska security forces, because Serbia did not exercise the level of ‘effective control’ necessary to attribute the conduct of the VRS to the Serbian state.³⁴⁷

However, in the Israeli context, individual criminal responsibility cannot substitute for addressing the broader machinery of state violence. Israel has implemented policies for decades that violate international law, including prolonged occupation, apartheid, and systematic measures that have undermined the right of Palestinians to self-determination.³⁴⁸ These policies have escalated to acts that satisfy the elements of genocide. While figures like Benjamin Netanyahu and Yoav Gallant have played central roles in the events unfolding in Gaza, the scope and scale of the destruction, in both rhetoric and military action, extend far beyond what can be attributed to a handful of individuals. The structural and systemic nature of Israel’s actions, including those carried out by the IDF and authorized through state institutions, demands accountability at the level of state responsibility.

This is particularly evident in the context of reproductive violence. The deliberate destruction of Gaza’s health infrastructure, including the bombing of the Al Basma IVF centre, reveals the scale of devastation and the absence of any credible justification under IHL.³⁴⁹ When reproductive systems are targeted and conditions are created that prevent births within a protected population, responsibility

³⁴⁰ *South Africa v Israel*, ICJ Press Release No 2023/77 (29 December 2023)

³⁴¹ *Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948, art IX.

³⁴² *Statute of the International Court of Justice*, arts 41, 59.

³⁴³ *Bosnia v Serbia*, at para 143.

³⁴⁴ *Ibid* at para 376.

³⁴⁵ *Ibid* at para 376.

³⁴⁶ *Ibid* at para 376.

³⁴⁷ *Ibid* at para 376.

³⁴⁸ Human Rights Watch, *A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution* (27 April 2021), online: *Human Rights Watch*; B’Tselem, *A Regime of Jewish Supremacy from the Jordan River to the Mediterranean Sea: This Is Apartheid* (Jerusalem: B’Tselem, 12 January 2021) at 1, 6.

³⁴⁹ Independent International Commission of Inquiry, “*More than a human can bear*” (13 March 2025) at para 42.

cannot be confined to individual actors. It reflects a broader pattern rooted in state policy. Reproductive justice, as a framework born from the struggle of women of colour against systemic oppression, demands that this violence be addressed in full context. Israel's actions go beyond occupation and extend into the realm of annihilating the conditions for Palestinian life itself. In such circumstances, it is essential to pursue state responsibility to hold Israel accountable for the structures and policies it has built and enforced. As legal scholar Amabelle Asuncion writes, "the state cannot cleanse itself by simply pointing fingers at individuals."³⁵⁰ No state, however powerful, should be above the law.

3.3 The Prevention of Births as Genocide

To date, genocide by means of preventing births, as outlined in Article II(d), remains unprosecuted in international jurisprudence. International jurisprudence has acknowledged the prevention of births as a means of genocide, including in the *International Criminal Tribunal for Rwanda (ICTR)* and the *International Criminal Tribunal for the Former Yugoslavia (ICTY)*. The ICTR provided the earliest detailed articulation of what constitutes measures intended to prevent births. The *Akayesu* judgment held that 'measures intended to prevent births' include acts such as sexual mutilation, enforced sterilization, forced birth control, separation of the sexes, and the prohibition of marriages.³⁵¹ Notably, the Chamber gave a specific example of genocidal rape.³⁵² In a patriarchal society, deliberately impregnating a woman from the target group with a man of another group, with the intent that any child will not belong to the mother's group, could constitute a measure to prevent births within that group.³⁵³ Moreover, the *Akayesu* judgment recognized that rape and sexual violence can prevent births not only physically, but also psychologically.³⁵⁴ For instance, it noted that rape can constitute a measure intended to prevent births when the person raped later refuses to procreate due to trauma or threats.³⁵⁵ The Trial Chamber also emphasized that rape and sexual violence can constitute genocide on the same basis as any other prohibited act, provided they are carried out with the intent to destroy a particular group.³⁵⁶

The ICTY recognized in the *Krstić* judgment that separating the sexes, through the targeted killing of males of military age and the forced transfer of women and children, carried serious demographic consequences for the Bosnian Muslim population of Srebrenica.³⁵⁷ The Appeals Chamber described this outcome as "the type of physical destruction the Genocide Convention is designed to prevent."³⁵⁸ Although the court did not convict under Article II(d), because the prosecution charged the conduct as killings and serious bodily harm, it nevertheless acknowledged that the combined pattern of gender selective massacre and forced transfer contributed to the physical destruction of the group.³⁵⁹

³⁵⁰ Amabelle Asuncion, 'Pulling the Stops on Genocide: The State or the Individual?' (2009) 20(4) *European J of International Law* 1195 at 1211.

³⁵¹ *Prosecutor v Akayesu*, at para 507.

³⁵² *Ibid* at para 508.

³⁵³ *Ibid* at para 507.

³⁵⁴ *Ibid* at para 731.

³⁵⁵ *Ibid* at para 731.

³⁵⁶ *Ibid* at para 731.

³⁵⁷ *Prosecutor v Krstić*, ICTY IT-98-33-A (19 April 2004) at paras 28 to 31.

³⁵⁸ *Ibid* at para 29.

³⁵⁹ *Ibid* at para 31.

A similar issue surfaced in *Tolimir*, where the ICTY examined whether conduct linked to the Bosnian Muslim enclave of Žepa, including the removal of men and the isolation of women alongside the disruption of family life, could amount to birth prevention measures by severing the social and demographic basis for reproduction.³⁶⁰ The Trial Chamber ultimately treated a reduced birth rate as insufficient on its own to prove a measure intended to prevent births, and the later appellate outcome turned on intent. The discussion remains significant because it recognizes that separation, isolation, and the dismantling of family structures can be relevant to Article II(d) when they are imposed as part of a broader plan directed at group destruction.³⁶¹ Collectively, these cases demonstrate that Article II(d) has been recognized in principle, but international courts have not yet tested it through a fully developed factual record and a direct conviction based on prevention of births.

Additionally, measures to prevent births can be explicit, including forced birth control, sexual violence, or sterilization.³⁶² However, Israel's pattern consists of structural barriers that restrict access to the conditions necessary to carry pregnancies safely and give birth, thereby undermining the future of the group. Recently, in the January 23, 2020 *Order on The Gambia v Myanmar Request for the Indication of Provisional Measures*, the ICJ explicitly named Article II(d), directing Myanmar to "take all measures" to prevent acts under Article II(d).³⁶³ This marked the first instance in which the ICJ directly addressed birth prevention by naming Article II(d) in its operative order. In the January 26, 2024 *Order on the South Africa v Israel Request for the Indication of Provisional Measures*, the Court also explicitly listed Article II(d).³⁶⁴

Against the Rohingya, measures that may amount to preventing births have included a combination of law, policy, and violence. Myanmar imposed restrictions such as a two-child policy targeting Rohingya families, denied access to marriage and birth registration, and enacted the 2015 Population Control Healthcare Law mandating birth spacing.³⁶⁵ These structural controls were compounded by sexual violence, including rape and forced pregnancy, often committed during military operations.³⁶⁶

Together, these actions curtailed the Rohingya's ability to reproduce safely and freely, aligning with the types of conduct addressed under Article II(d) of the Genocide Convention. South Africa's application to the ICJ represents a significant application of international law in addressing the role of reproductive rights and healthcare access within the context of genocide. It brings forward, explicit allegations of maternal healthcare failure in a genocide case, including unsafe childbirth conditions, killings of pregnant women seeking care, and forced medical procedures.³⁶⁷ These claims go beyond

³⁶⁰ *Tolimir*, at paras 762 to 767.

³⁶¹ *Ibid* at paras 762 to 767.

³⁶² *Ibid* at para 743.

³⁶³ *The Gambia v Myanmar*, Provisional Measures, Order (23 January 2020) [2020] ICJ Rep 3 at para 86(1)(d).

³⁶⁴ *South Africa v Israel*, Provisional Measures, Order (26 January 2024) [2024] ICJ Rep 3 at para 78.

³⁶⁵ *Report of the Independent International Fact Finding Mission on Myanmar*, UNHRC, 39th sess, UN Doc A/HRC/39/64 (2018) at para 23.

³⁶⁶ United Nations Human Rights Council, *Sexual and gender based violence in Myanmar and the gendered impact of its ethnic conflicts*, Independent International Fact Finding Mission on Myanmar, 42nd Sess, UN Doc A/HRC/42/CRP.4 (22 August 2019) at paras 1–3, 13–15.

³⁶⁷ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel)*, Application Instituting Proceedings (29 December 2023) at paras 95–97.

general deprivation or structural violence and describe targeted reproductive health harm directly related to Article II(d) of the Genocide Convention.

3.4 Imposing Measures Intended to Prevent Births: A Genocide Convention Article II(d) Analysis of Israeli Conduct in Gaza

A reproductive justice lens clarifies why Article II(d) can be engaged through measures that undermine the foundation needed for reproduction. Reproductive justice is concerned with having the conditions where one can have children and raise children in a safe and healthy environment.³⁶⁸ In situations of sustained violence and deprivation, those conditions can be dismantled through restrictions and policies that make pregnancy and childbirth unsafe, and that make early life unviable at a population level.³⁶⁹ The legal question under Article II(d) is whether measures are imposed that function, in practice, as birth prevention within the group, and whether those measures are carried out with the intent to destroy the group, in whole or in part.

As discussed in Chapter two, I show three interconnected pillars, drawn from core aspects of the reproductive justice framework, through which reproduction is being undermined, denial and obstruction of aid, civilian harm including attacks on life sustaining infrastructure, and displacement.³⁷⁰ They restrict access to the basic conditions that make pregnancy survivable, and childbirth safely supported, and they destabilize the possibility of raising children in a safe and healthy environment.³⁷¹ This is not a claim that hardship alone establishes genocide. However, repeated measures that dismantle the conditions for having children and raising children in a safe and healthy environment can constitute imposed measures intended to prevent births within the meaning of Article II(d), when the pattern of conduct and the surrounding context support that conclusion. This framing sets up the two points that must be shown to establish genocide, a pattern of conduct that amounts to the imposition of birth preventing measures, and specific intent to destroy the group in whole or in part.

The killings at Srebrenica illustrate how genocide is often established through a sustained pattern of conduct rather than a single discrete episode. The factual picture is not limited to the executions themselves. It includes the creation of a contained and highly vulnerable civilian space, marked by encirclement, shelling, repeated attacks, the concentration of displaced persons, and restrictions that made civilian survival dependent on external access.³⁷² In the record, these conditions are linked to the safe area framework and to the international recognition that the situation raised acute concerns under the Genocide Convention.³⁷³ The surrounding conduct matters because it shows that violence was organized around control over civilian movement and civilian life, not only around defeating opposing

³⁶⁸ Ross, “Reproductive Justice as Intersectional Feminist Activism” at 292.

³⁶⁹ Onwuachi-Saunders, Dang & Murray, “Reproductive Rights, Reproductive Justice” at 23.

³⁷⁰ See discussion in Chapter two, pg 19.

³⁷¹ See discussion in Chapter two, pg 19.

³⁷² Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Yugoslavia (Serbia and Montenegro)), Memorial of the Government of the Republic of Bosnia and Herzegovina (15 April 1994) at ch 5.3.1, ch 5.3.3 and para 3.2.0.14 to 3.2.0.16, see also *Prosecutor v Krstić*, at paras 14 to 15, 26 to 27 and 31 to 34.

³⁷³ *Prosecutor v Krstić* at paras 15, 18; *Bosnia v Serbia*, at paras 278, 282-283.

forces.³⁷⁴ Within that sequence, the killing of more than 8,000 Bosnian Muslim men and boys is legally significant because it functions as the culminating act in a repeated course of conduct that predictably destroys the group, in part, in the relevant locality.³⁷⁵ The memorial's framing supports the inference method used in genocide cases.

Once a pattern of killings and terrorizing conduct is proven, it may support a finding of genocidal intent only where genocidal intent is the only reasonable inference to be drawn from the evidence as a whole.³⁷⁶ Genocide analysis applies a basic inference principle, an actor is presumed to intend the natural consequences of the conduct, namely the destruction, in whole or in part, of the protected group, unless the evidence as a whole supports a different conclusion.³⁷⁷ The scale of executions, the selectivity of targeting a core segment of the community, and the prior containment and deprivation measures in Srebrenica form the kind of sustained pattern from which intent may be inferred.³⁷⁸ This pattern based approach matters for Article II(d) because birth prevention is unlikely to be implemented through a single discrete act. It is more often implemented through measures that, over time, dismantle a group's ability to reproduce and to sustain family life, and it is therefore especially dependent on showing repeated conduct and surrounding context. The legal findings in *Prosecutor v Krstić* and *Bosnia and Herzegovina v Serbia and Montenegro* confirm that the acts committed at Srebrenica constituted genocide and that intent can be inferred from the organized course of conduct surrounding the killings.³⁷⁹

Akayesu helps frame Article II(d) because it confirms that reproductive destruction can occur through coercive practices and coercive circumstances that impair a group's capacity to reproduce.³⁸⁰ Although the jurisprudence on Article II(d) is relatively sparse, it supports the central point that genocide law can capture reproductive destruction where the measures imposed, viewed in context, are intended to prevent births within the group.³⁸¹ *Akayesu* supports reading Article II(d) broadly enough to include acts that physically damage reproductive capacity and acts that impose coercive circumstances that make reproduction untenable, including through severe sexual violence and trauma that foreseeably alter reproductive outcomes and reproductive decision making.³⁸² The point for this analysis is not that demographic impact alone satisfies Article II(d), but that imposed separation and the dismantling of family life are legally relevant facts when they form part of a sustained course of conduct directed at group destruction. With this legal framing in place, the analysis turns to whether the three pillars operate, in practice, as imposed birth preventing measures, and whether the surrounding context supports the inference of specific intent.

Israel's actions in Gaza reflect a similarly sustained course of conduct, expressed through the same three pillars discussed in chapter two, which operate as mutually reinforcing measures that predictably erode the capacity to carry pregnancies safely and to sustain life.³⁸³ The point is not that each individual

³⁷⁴ *Prosecutor v Krstić* at paras 148-150; *Bosnia v Serbia*, at paras 278, 282-283.

³⁷⁵ *Prosecutor v Krstić* at paras 84, 598; *Bosnia v Serbia*, at paras 278, 293.

³⁷⁶ *Croatia v Serbia*, [2015] ICJ Rep 3 at para 148.

³⁷⁷ *Prosecutor v Krstić* at paras 615, 635; *Bosnia v Serbia*, at paras 369-370, 373-374.

³⁷⁸ *Prosecutor v Krstić* at paras 84, 148-150, 530, 615, 635; *Bosnia v Serbia*, at paras 369-370, 373-374.

³⁷⁹ *Prosecutor v Krstić* at paras 572-573, 546-547; *Bosnia v Serbia*, at paras 278, 292-293, 376.

³⁸⁰ *Prosecutor v Akayesu*, at para 731.

³⁸¹ *Ibid* at para 507.

³⁸² *Ibid* at para 731.

³⁸³ See discussion in Chapter two, pg 19.

act, considered in isolation, proves birth prevention. The point is that repeated restrictions and attacks, when maintained over time and in the face of known consequences, can function as imposed measures that make pregnancy loss, childbirth without care, and neonatal death foreseeable outcomes, and can also produce long term reproductive harms that would be treatable in a functioning system.

The inference of intent is strengthened where policy and public rhetoric frame deprivation as a deliberate instrument rather than an incidental byproduct. On 9 October 2023, Defence Minister Yoav Gallant announced a “complete siege” and said there would be “no electricity, no food, no fuel,” at the outset of the campaign.³⁸⁴ Statements of this kind matter because they publicly connect civilian deprivation to operational purpose, and they help explain why the resulting collapse of pregnancy safe life and maternal care can be understood as an intended consequence of the measures imposed. Public statements that erase the civilian status of children sharpen the relevance of this evidence for Article II(d), because they bring babies, and by extension mothers, into the zone of legitimized harm. In a statement attributed to Likud MP and Deputy Speaker of the Knesset Nissim Vaturi, Palestinians in Gaza were framed as categorically terrorist, including through the claim that “Every child born now, in this minute, is already a terrorist when he is born.”³⁸⁵ Even where a single quote cannot carry the inference on its own, language that treats birth itself as the creation of an enemy strengthens the interpretive link between a deprivation regime and the destruction of the group’s future, because it makes the reproductive consequences of siege, displacement, and health system collapse appear compatible with the ends being endorsed. Israel has framed its conduct as necessary for self-defence and civilian protection.³⁸⁶ But those aims do not excuse conduct that exceeds the limits of IHL, and persistent patterns of deprivation and civilian harm inconsistent with those limits may support the inference that the measures imposed are not explained by military necessity alone.³⁸⁷

The *South Africa v Israel* proceedings at the ICJ also matter for intent as they placed Israel on formal notice of the relationship between deprivation, displacement, and the risk of Article II harms, including Article II(d). In its 26 January 2024 order, the Court indicated provisional measures directed at preventing acts within Article II, alongside measures connected to humanitarian assistance and the prevention of incitement.³⁸⁸ The Court later reinforced and modified those measures as conditions deteriorated, with the most recent being the 24 May 2024 order addressing Rafah.³⁸⁹ Yet the humanitarian crisis, including catastrophic impacts on pregnant women, newborns, and the capacity to sustain family life, has persisted at scale despite these directions, raising serious questions about

³⁸⁴ Times of Israel, “Defense minister announces, ‘complete siege’ of Gaza, no power, food or fuel” (9 October 2023).

³⁸⁵ Middle East Eye, “Nissim Vaturi ... ‘every child born in Gaza ... already a terrorist’” (Shorts video), online: *YouTube*.

³⁸⁶ Israel Ministry of Foreign Affairs, *Hamas–Israel Conflict 2023: Key Legal Aspects* (2 November 2023), online: Israel Ministry of Foreign Affairs.

³⁸⁷ United Nations, *Charter of the United Nations*, 26 June 1945, 1 UNTS XVI, art 51; *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, [1996] ICJ Rep 226 at para 25.

³⁸⁸ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (South Africa v Israel)*, Provisional Measures, Order (26 January 2024) at para 78.

³⁸⁹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel)*, Request for the Modification of the Order of 28 March 2024, Order (24 May 2024) at paras 11, 28–30.

compliance and about the continued maintenance of measures with known reproductive consequences.³⁹⁰ For Article II(d), persistence after such notice is significant because intent is often inferred from pattern, foreseeability, and continuation of acts despite repeated warnings.³⁹¹

In light of the pattern of conduct set out above, Israel's conduct in Gaza can be characterized as genocide under Article II(d) of the Genocide Convention. The three pillars set out above, denial and obstruction of aid, civilian harm including the targeting of life sustaining infrastructure, and displacement, operate together as imposed measures that predictably prevent births within the group in practice. Article II(d) is not limited to direct interference with fertility. As *Akayesu* confirms, it also reaches imposed measures that, in practice, dismantle the possibility of safe reproduction and early life, when carried out with intent to destroy the group, in whole or in part.³⁹² Here, the pattern is sustained and cumulative, reinforced through mutually compounding forms of deprivation and instability that eliminate the practical possibility of safe reproduction and early life. The jurisprudence supports this pattern-based approach. The killings at Srebrenica illustrate how genocidal intent is inferred from a sustained course of conduct that organizes civilian life around containment, deprivation, and predictable destruction, rather than from any single isolated act.³⁹³ *Akayesu* confirms that coercive practices and circumstances can amount to reproductive destruction.³⁹⁴ *Tolimir* reinforces the relevance of imposed separation and the dismantling of family life to Article II(d) when linked to a broader plan of group destruction.³⁹⁵ These legal authorities show that birth prevention is often established through repeated conduct and surrounding context, and that courts assess intent through foreseeability, persistence, and the overall structure of the measures imposed.

Intent is reinforced by policy and public rhetoric that frame deprivation as a deliberate instrument rather than an incidental consequence. Gallant's siege announcement, made at the outset, is significant because it links the denial of essentials to operational purpose, and therefore supports the inference that the resulting collapse of pregnancy safe life and maternal care was an intended consequence of the measures imposed.³⁹⁶ Statements that erase the civilian status of children further align with an interpretation in which the destruction of early life and the undermining of future births are treated as compatible with the ends being pursued. The ICJ's provisional measures orders in *South Africa v Israel* then placed Israel on formal notice of the relationship between deprivation, displacement, and the risk of Article II harms, including Article II(d).³⁹⁷ The continued persistence of Israel's impacts on pregnant women, and the capacity to sustain family life after that notice strengthens the inference of intent,

³⁹⁰ United Nations Population Fund, *UNFPA Palestine Situation Report, Issue #8* (22 May 2024).

³⁹¹ Prosecutor v *Krstić* at paras 615, 635; *South Africa v Israel*, Order (24 May 2024) at paras 5, 8, 11–12, 27–30, 52–55.

³⁹² *Prosecutor v Akayesu*, at para 507.

³⁹³ Prosecutor v *Krstić* at paras 148–150, 530, 615, 635; *Bosnia v Serbia*, at paras 278, 282–283, 373–374.

³⁹⁴ *Prosecutor v Akayesu*, at para 731.

³⁹⁵ *Tolimir*, at paras 762 to 767.

³⁹⁶ Times of Israel, "Defense minister announces, 'complete siege' of Gaza, no power, food or fuel" (9 October 2023).

³⁹⁷ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (South Africa v Israel)*, Provisional Measures, Order (26 January 2024) at paras 54, 78–80, 86(1); *South Africa v Israel*, Order (24 May 2024) at paras 27–30, 32–34, 50–52.

because the law permits intent to be inferred from sustained pattern, foreseeability, and continuation despite known consequences.

Accordingly, the cumulative pattern established here supports the conclusion that Israel is imposing measures intended to prevent births within the meaning of Article II(d), and that the surrounding context supports the inference of specific intent to destroy Palestinians in Gaza, at least in part, as a protected group. With that conclusion in place, the analysis can then turn to third state responsibility and the duties of other states to prevent genocide, to avoid assistance in maintaining the underlying measures, and to pursue accountability where a serious risk of genocide exists.

3.5 Canada's Responsibilities as a Third State

Canada provides a particularly useful case study for assessing third state responsibilities in relation to Gaza. As a party to the relevant international treaties, Canada has binding duties to prevent and punish internationally wrongful acts, including genocide, regardless of political alignment. Those obligations do not weaken because the alleged perpetrating state is an ally, as is the case with Canada and Israel.³⁹⁸ These obligations are further enforced by Canada's public commitment since 2017 to a "feminist foreign policy," which professes to prioritize human rights, gender equality, and international justice.³⁹⁹ This framework intensifies the expectation that Canada should actively respond to systematic violence with disproportionate and gendered impacts, such as those occurring in Gaza. However, since October 7 the public record raises serious questions about whether Canada has translated those commitments into action in the face of mounting evidence of mass civilian harm and genocidal conduct, including attacks on reproductive health infrastructure and repeated forced displacement. In the pages that follow, I assess Canada's conduct against its third state duties of non-recognition, non-assistance, and the duty to prevent and punish genocide by examining four areas of state practice.⁴⁰⁰ I focus on Canada's approach to arms export permits and transfer pathways, its diplomatic messaging and bilateral engagement, its voting and positioning in UN bodies, and its engagement with international legal and accountability processes. Together, these indicators help show whether Canada has used the means available to it to help prevent further harms in Gaza, or whether its actions and omissions have instead contributed to the continuation of the underlying violations.

Regarding its messaging and legal positioning, Canada has insisted that it will not characterize Israel's conduct in Gaza as genocide unless and until the ICJ reaches a final decision in *South Africa v Israel*.⁴⁰¹ Canadian Ambassador to the UN David Lametti has framed this as a matter of waiting for "all the

³⁹⁸ Prime Minister of Canada, "Prime Minister announces even closer cooperation with Israel" (2 April 2019), online: *Prime Minister of Canada*; International Law Commission, "Articles on Responsibility of States for Internationally Wrongful Acts" (2001), art 41(2).

³⁹⁹ GAC, "Feminist Approach, Innovation and Effectiveness Guidance"; GAC, "Canada's Feminist International Assistance Policy".

⁴⁰⁰ These third state duties arise from International Law Commission, "Articles on Responsibility of States for Internationally Wrongful Acts" (2001), arts 40-41; *Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948, 78 UNTS 277, art I; GC I, art 1.

⁴⁰¹ Benjamin Lopez Steven, "Canada needs all evidence assessed before recognizing genocide in Gaza, says incoming UN ambassador", CBC News (19 September 2025), online: *CBC*.

evidence to come in,” presenting caution as principle.⁴⁰² This decision sits uneasily alongside Canada’s approach to Myanmar. On September 20, 2018, the House of Commons unanimously adopted a motion recognizing that Myanmar’s crimes against the Rohingya constituted genocide, even though the ICJ case remains ongoing today.⁴⁰³ Then Foreign Minister Chrystia Freeland publicly affirmed Canada’s support for accountability and emphasized solidarity with the Rohingya.⁴⁰⁴ In the years that followed, Canada backed that language with legal engagement, including participation in the ICJ proceedings concerning Myanmar’s responsibility under the Genocide Convention, a step that underscores Canada’s willingness to take public legal positions before cases conclude.⁴⁰⁵ Canada’s Joint Declaration of Intervention also supported a child sensitive interpretation of the Convention, emphasizing that serious harm and destructive conditions must be assessed in light of children’s vulnerability, and that deprivation and displacement can take on a different legal significance where children’s survival is predictably threatened.⁴⁰⁶ This positioning is especially concerning because Canada has not hesitated to emphasize Israel’s right to defend itself, creating a credibility gap as political alignment is shaping, and potentially undermining, Canada’s ability to meet its legal obligations.⁴⁰⁷

At the United Nations, that caution towards Gaza translated into a voting record that shifted over time, but often lagged behind the scale of harm on the ground. On October 27, 2023, Canada abstained on the General Assembly resolution calling for a humanitarian truce in Gaza, after its proposed amendment to expressly condemn Hamas and call for the release of hostages failed.⁴⁰⁸ By December 11, 2023, Canada voted in favour of the General Assembly resolution demanding an immediate humanitarian ceasefire, even as the text remained politically contested.⁴⁰⁹ These votes show a government prepared to endorse humanitarian language in principle, but that repeatedly narrows its framing through a primary emphasis on Hamas’s October 7 attacks and hostage taking, while remaining comparatively restrained in naming and responding to Israel’s conduct in Gaza. That narrowing mattered politically and legally, because it shapes how Canada positions itself on questions of accountability and compliance while the deprivation, displacement, and attacks on civilian infrastructure continued.

⁴⁰² Benjamin Lopez Steven, “Canada needs all evidence assessed before recognizing genocide in Gaza, says incoming UN ambassador”, CBC News (19 September 2025), online: *CBC*.

⁴⁰³ House of Commons, Journals, 42nd Parl, 1st Sess, No 322 (20 September 2018) at “Motions”, online: House of Commons.

⁴⁰⁴ Chrystia Freeland, Minister of Foreign Affairs, “Canada welcomes the Gambia’s action to address accountability in Myanmar” (11 November 2019), online: *Government of Canada*.

⁴⁰⁵ International Court of Justice, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v Myanmar)* (Joint Declaration of Intervention of Canada, Denmark, France, Germany, the Netherlands and the United Kingdom, 15 November 2023) (General List No 178).

⁴⁰⁶ Canada, Kingdom of Denmark, French Republic, Federal Republic of Germany, Kingdom of the Netherlands and United Kingdom of Great Britain and Northern Ireland, *Joint Declaration of Intervention* (pursuant to Article 63 of the Statute of the International Court of Justice) in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v Myanmar)* (15 November 2023) at paras 38–43.

⁴⁰⁷ Prime Minister of Canada, “Prime Minister Justin Trudeau speaks with Chancellor of Germany Olaf Scholz” (13 February 2024), online: *Prime Minister of Canada*.

⁴⁰⁸ Global Affairs Canada, “Canada’s explanation of vote on today’s resolution tabled at the UN General Assembly’s 10th emergency special session” (27 October 2023), online: *Government of Canada*.

⁴⁰⁹ Global Affairs Canada, “Canada’s explanation of vote on the December 12, 2023 resolution tabled at the UN General Assembly” (13 December 2023), online: *Government of Canada*.

One of the rights that ties most deeply into reproductive justice is self-determination. As stated previously, the reproductive justice framework cannot function under occupation and any remaining aspect of reproductive justice has been dismantled through Israel's illegal actions in Gaza. All states must work to realize self-determination both domestically and internationally.⁴¹⁰ The ICJ highlights this in its 2024 advisory opinion stating that all states must work with the United Nations to make this a reality "every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter."⁴¹¹ While Canada frequently points to the end goal of a two-state solution, it was one of 25 UN member states to abstain from a vote to make Palestine a full member of the United Nations in May 2024.⁴¹² However, on September 21, 2025 Canada chose to officially recognize Palestine as a state.⁴¹³ This said, the continued lack of pressure on Israel to end its genocidal campaign gives Canada's recognition of Palestine little weight as Palestinians continue to face genocide in Gaza, including through Israel's actions intended to prevent births.

Humanitarian assistance also differed in substance and framing. While Canada has provided aid to Gaza, it has not prioritized reproductive care, maternal health, or support for survivors of gender-based violence as it did with the Rohingya.⁴¹⁴ Despite widespread reports of pregnant women giving birth in unsafe conditions and massive civilian casualties, Canada's public appeals remained largely general. Canada has called for unimpeded humanitarian access into and within Gaza. However, there is no statements specifically identifying reproductive health or maternal care as priorities.⁴¹⁵ Canada has largely presented Gaza as a humanitarian crisis requiring increased assistance and protection for civilians. That emphasis becomes legally incomplete when it is not paired with third state action directed at ending the unlawful conditions in the first place. By focusing on aid delivery without taking measures consistent with third state obligations, Canada risks obscuring rather than addressing the drivers of Gaza's reproductive health catastrophe. Canada's emphasis therefore leans toward a technical response to deprivation, rather than a legal and political response to an unlawful situation. Provision of aid is also not separate from politics. Canada's decision to defund UNRWA following Israel's allegations that UNRWA staff were

⁴¹⁰ United Nations General Assembly, Resolution 2625 (XXV), *Declaration on Principles of International Law concerning Friendly Relations and Co operation among States in accordance with the Charter of the United Nations*, UNGAOR, 25th Sess, Supp No 28, UN Doc A/RES/2625(XXV) (24 October 1970).

⁴¹¹ *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion, 19 July 2024, I.C.J. at para 275.

⁴¹² UN General Assembly, 10th Emergency Special Session, Resolution ES-10/23, *Admission of new Members to the United Nations*, adopted 10 May 2024, vote 143–9–25 (25 abstentions), UN Doc A/RES/ES-10/23; Global Affairs Canada, "Canada Abstains from United Nations General Assembly Resolution on Admission of New Members to the United Nations" (10 May 2024), online: *Government of Canada*.

⁴¹³ Prime Minister of Canada, "Statement by Prime Minister Carney on Canada's recognition of the State of Palestine" (21 September 2025), online: *Prime Minister of Canada*.

⁴¹⁴ Global Affairs Canada, "Canada's strategy to respond to the Rohingya and Myanmar crises (2021 to 2024)" (5 March 2024), online: *Government of Canada*.

⁴¹⁵ Global Affairs Canada, "Canada's statement delivered at 52nd plenary meeting of the UN General Assembly, 78th session" (9 January 2024), online: *Government of Canada*.

involved in the October 7 attacks illustrates this dynamic.⁴¹⁶ Evidence of the allegations never materialized in a way that justified the breadth of the response, and Canada reinstated funding weeks later amid criticism that the decision was harmful to civilians dependent on UNRWA's operations.⁴¹⁷

Finally, Canada's increased approvals of military exports to Israel following October 7, surpassing the previous year's total, have drawn legal and public criticism.⁴¹⁸ This conduct sits in opposition with Canada's feminist foreign policy, and it also raises concerns under Canada's third state duties under the Genocide Convention, which require prevention and restraint once a serious risk of genocide arises.⁴¹⁹ It also exposes an area of regulatory concern. Even where Canada claims it will restrict direct exports to Israel, the "U.S. loophole" in the *Export and Import Permits Act* allows military goods to flow to the United States without the usual permitting and end use scrutiny, then become difficult to trace once integrated into U.S. supply chains.⁴²⁰ This structure can permit Canadian produced components, including parts linked to F 35 supply chains and explosive materials, to reach Israel indirectly while Ottawa distances itself from the final destination.⁴²¹

This is where actions like passing Bill C-233 becomes especially relevant. Commonly known as the "No More Loopholes Act," Bill C-233 would close the indirect transfer pathway by ending the exemption that allows U.S. bound military exports to bypass permit requirements, and by bringing those transfers back within Canada's arms control regime and Arms Trade Treaty due diligence.⁴²² Even if Canada limits direct permits to Israel, leaving this structure intact risks turning a stated pause into a technical adjustment rather than a real constraint on material support. In that light, continued military related exports, parts, and components, whether direct or routed through the United States, weaken the claim that Canada has stepped back from enabling conduct and intensify the broader legal concern about complicity and failure to prevent. This discussion is not exhaustive. It offers a high-level account of Canada's military export practice and choices since October 7, meant to illustrate the core points of tension between Canada's stated policy commitments and its third state legal obligations.

As Canada has recently taken the monumental step of recognizing Palestine as a state, it should now take the time to reevaluate all its agreements with and ties to Israel. Recognition cannot sit alongside

⁴¹⁶ Ahmed Hussen, Minister of International Development, "Statement by Minister Hussen on allegations against staff of United Nations Relief and Works Agency for Palestine Refugees in the Near East" (26 January 2024), online: *Government of Canada*.

⁴¹⁷ Global Affairs Canada, "Canada announces continued assistance for people in Gaza" (News Release, 8 March 2024), online: *Government of Canada*; United Nations Office at Geneva, "Independent review panel releases final report on UNRWA" (22 April 2024), online: *United Nations Office at Geneva*; Al Jazeera Staff, "Canada lifting freeze on UNRWA funding after weeks of protests, criticism" (8 March 2024), online: *Al Jazeera*.

⁴¹⁸ Michael Bueckert, "CJPME condemns Canada's record breaking 2023 military exports to Israel" (Press Release, 4 June 2024), online: *Canadians for Justice and Peace in the Middle East*.

⁴¹⁹ *Bosnia v Serbia*, [2007] ICJ Rep 43 at paras 430; *Convention on the Prevention and Punishment of the Crime of Genocide*, art I.

⁴²⁰ Arms Embargo Now, Palestinian Youth Movement, Canadians for Justice and Peace in the Middle East (CJPME) & World Beyond War, *Exposing the U.S. Loophole: How Canadian F 35 Parts and Explosives Reach Israel* (18 November 2025) at 3 to 4.

⁴²¹ Arms Embargo Now et al, *Exposing the U.S. Loophole* at 4.

⁴²² House of Commons, Bill C 233, An Act to amend the Export and Import Permits Act, 1st Sess, 45th Parl, 2025 (first reading 19 September 2025) (summary and bill text), online: *Parliament of Canada*.

relationships that risk entrenching an unlawful situation, or that allow Canadian cooperation, trade, or security support to operate as quiet reinforcement. This would breach Canada's duty not to aid, assist or maintain illegal situations. Therefore, Canada should treat this moment as a reset and ensure that every channel of engagement reflects a clear distinction between Israel's territory and the occupied Palestinian territory, and a clear refusal to contribute to the maintenance of Israel's unlawful presence or to ongoing violations in Palestine.

That reevaluation should produce specific legal, diplomatic, and economic measures. Canada should suspend arms exports and related permits to Israel, and it should close any practical pathways through which Canadian controlled goods can reach Israel indirectly, including through transfers routed via the United States. Canada should also suspend trade agreements with Israel as it risks further entrenching an unlawful situation, and it should review procurement, research, and security cooperation arrangements for the same reason. These steps reduce the risk of economic support that helps maintain an illegal situation. Canada should apply sustained diplomatic pressure to ensure that humanitarian aid reaches those who need it, including medical supplies, maternal health equipment, fuel for hospital power, safe water inputs, and nutritionally adequate food. This approach operationalizes Canada's duty to ensure respect for IHL through the means available to it. At the diplomatic level, Canada should align its public messaging and policy choices with the findings of the 2024 ICJ Advisory Opinion, including by ensuring that Canada's conduct does not amount to recognition, aid, or assistance in maintaining an illegal situation.⁴²³

Canada should also actively support independent investigations into serious violations of IHL and IHRL in Gaza, including through cooperation with UN mechanisms and other accountability processes that can establish facts, attribute responsibility, and preserve evidence. Support for these mechanisms strengthens prevention by improving credible fact finding and accountability pathways. If Canada fails to take these steps, it risks undermining the international legal frameworks it claims to uphold. Common Article 1 of the Geneva Conventions requires Canada to use the means available to it to ensure respect for IHL. The Arms Trade Treaty requires restraint where transfers pose a serious risk of facilitating grave violations, including foreseeable harms to civilians. The Genocide Convention requires prevention, not hindsight, and it demands particular seriousness where credible warnings and judicial findings place states on notice of genocidal risk. The 2024 ICJ Advisory Opinion reinforces these duties by clarifying what non recognition, non-assistance, and active steps to bring an unlawful situation to an end require in practice.⁴²⁴ In Gaza, these are not abstract obligations. They bear directly on the protections of reproductive justice, including having the conditions where one can have children and raise children in a safe and healthy environment.

Canada's conduct since October 7, when measured against the legal duties that bind it, reveals a widening gap between stated commitments and the requirements of third state responsibility. A state that has pledged a feminist foreign policy, endorsed child sensitive interpretations of genocide law in the Myanmar proceedings, and recognized Palestine cannot treat Gaza as only a humanitarian emergency while avoiding the legal implications of an unfolding unlawful situation marked by mass civilian harm, deprivation, and repeated displacement. The duties of non-recognition, non-assistance, and prevention

⁴²³ *Legal Consequences of the Construction of a Wall*, Advisory Opinion at paras 279-283.

⁴²⁴ *Ibid.*

are engaged by serious risk and credible notice, not by a final judgment on the merits, and they require more than careful language and limited relief funding. In this setting, continued military export pathways, restrained multilateral positioning, and the framing of accountability as premature weaken Canada's claim to be acting consistently with its treaty obligations. If Canada is to preserve the credibility of its commitments to human rights and gender equality, and to comply with the international legal order it invokes, it must align its diplomacy, trade, and arms control practice with the obligation to withdraw support from unlawful situations and to take meaningful steps to prevent further harms that strip Palestinians of the ability to have children and raise children in a safe and healthy environment.

Conclusion

This thesis has demonstrated that reproductive violence is not a secondary harm that happens somewhere behind the main story of armed conflict. In Gaza, it is a central pathway through which civilian life is made unsustainable. When the systems that make pregnancy survivable, birth medically supported, and early childhood viable are dismantled, the result is not only widespread suffering, but also the erosion of the conditions that make future generations possible. A reproductive justice lens explains how these patterns operate and why they engage specific legal duties. It shows how sustained coercion and deprivation are implemented through the governance of daily survival, including the conditions of medical

care, movement, and access to necessities, and why these should be understood as an interconnected set of measures that reshape reproductive life and the conditions that make future generations possible.

The analysis established that the harms described in Gaza fall within recognizable legal frameworks rather than outside the reach of law. What matters legally is not only the presence of hostilities, but the exercise of power over civilian survival. International humanitarian law prohibits using deprivation as a method directed at civilians and limits practices that obstruct or manipulate relief. Where that power is exercised through occupation, duties expand into affirmative obligations of governance, including maintaining public health and ensuring access to essential goods and medical care. The point is not that every hardship in war becomes unlawful. The point is that sustained practices that foreseeably produce deprivation and medical collapse, especially where the occupying power has decisive control over borders and essentials, demand legal evaluation as deliberate interference with protected civilian life rather than as unfortunate consequences.

The three pillars examined, obstruction of aid, attacks on civilians and life sustaining infrastructure, and forced displacement, do not operate in isolation. They reinforce each other and accumulate over time. This accumulating effect is what gives reproductive violence its distinctive structure. Hunger and dehydration weaken pregnancy outcomes and reduce the ability to breastfeed. The destruction of maternity and neonatal services removes the mechanisms that prevent miscarriage, treat complications, and keep premature infants alive. Displacement then strips away shelter, privacy, sanitation, continuity of care, and any stable environment for postpartum recovery and infant feeding. The harm is therefore cumulative, and it is cumulative in precisely the domains that international law identifies as requiring heightened protection. When these conditions persist in the face of known consequences, they cannot be explained away as unforeseeable. They become part of the architecture of the campaign, not an accidental by-product of it.

That structure also matters for the genocide analysis. Article II(d) of the Genocide Convention is rarely litigated, but the jurisprudence that exists supports the core proposition that birth prevention is not limited to direct interference with fertility. International courts have recognized that reproductive destruction can occur through coercive practices and circumstances that impair a group's capacity to reproduce, and that imposed separation and the dismantling of family life can be legally relevant when embedded in a broader plan directed at group destruction. This thesis applied that logic to Gaza by treating reproductive harm as something that can be produced through sustained deprivation, collapse of care, and forced instability, where these measures function in practice to make pregnancy non-viable and early life increasingly unsustainable. Demographic impact alone does not carry the genocide analysis. The question is how a sustained course of conduct, its predictable consequences, and its continuation after repeated warnings bear on intent. A reproductive justice lens helps name what that course of conduct does, and why it matters. It treats the dismantling of the conditions for reproduction and infant survival as a central dimension of the harm, rather than a secondary consequence of conflict.

This thesis shows that the most legally important feature of Israel's conduct is its cumulative actions. The same measures that govern humanitarian access, civilian movement, and the viability of medical care also govern whether pregnancy can be carried safely to term and whether newborns can survive. That is why reproductive violence should be treated as a core category, it captures how law and policy choices reshape the conditions of reproduction, rather than treating maternal and neonatal harm as a side issue. The ICJ's provisional measures orders in *South Africa v Israel* provide a legal reference point

for this approach, because they confirm that the Convention is concerned with serious risk in real time, and that once the risk is evident, states must act on what is already known, not wait for a final judgment.

The final implication concerns responsibility beyond the primary actor. A central failure of contemporary accountability in armed conflict is the tendency of third states to treat mass civilian harm as an unfortunate tragedy while continuing practices that enable it. This thesis used Canada to illustrate how that posture collides with legal duties of prevention, non-assistance, and non-recognition. Canada's record shows that states can recognize genocide risk in real time and treat imposed conditions as legally consequential rather than merely tragic. That matters here because the harms at issue are not abstract, they are lived through the destruction of maternity care, the denial of essentials needed for safe pregnancy and birth, and the governance of daily survival. Where there is serious risk, prevention is the standard. Meeting it requires more than careful messaging and partial relief. It requires material choices that stop enabling unlawful conditions, restrict transfers and cooperation that facilitate harm, and align diplomacy with obligations that apply even when the state involved is a close partner.

What follows from this thesis is therefore both conceptual and practical. Conceptually, reproductive justice should be treated as a lens for identifying civilian harm that is otherwise normalized, fragmented, or misdescribed, especially in contexts where women and children bear the heaviest burdens of deprivation and displacement. Practically, the legal framework already provides the baseline for action, ensuring humanitarian access, protecting medical units, prohibiting starvation, preventing forcible transfer, and using the means available to prevent and avoid contributing to genocide risk. The gap is not the absence of law. The gap is the unwillingness to apply the law consistently when doing so would require political cost. In Gaza, reproductive violence shows how quickly a population's future can be narrowed through the destruction of the conditions that allow life to begin and endure. Treating those harms as legally central rather than as collateral concerns is essential to any credible account of protection, accountability, and prevention.

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