

**Submission of the International Commission of Jurists to the UN
Committee on Economic, Social and Cultural Rights**

In response to the “Call for inputs on the Draft General Comment on the Application of the International Covenant on Economic, Social and Cultural Rights in Situations of Armed Conflicts”

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Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952, in consultative status with the Economic and Social Council since 1957, and active on five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.

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1. The International Commission of Jurists ("ICJ") welcomes the opportunity to respond to the call by the Committee on Economic, Social and Cultural Rights (Committee) on elaborating this General Comment.
2. ICJ's submission draws on its research and experience in conflict, post-conflict, and transitional justice contexts, particularly in Africa and Nepal, and provides illustrative rather than exhaustive examples.¹ While this submission does not address the law of occupation in detail, the ICJ recommends that the Committee ensure the General Comment reflects that armed conflict may include belligerent occupation, given its severe implications for the implementation and protection of ICESCR and other human rights.²
3. In situations of armed conflict, impairments to the enjoyment of rights guaranteed under the Covenant are not always incidental effects of fighting but often arise from strategic or tactical decisions by parties to the conflict and are therefore intended direct or indirect consequences of their conduct. Moreover, such impairments may be central to or part and part and parcel of, hostilities, including where they are linked to structural inequalities relating to land, including those rooted in colonial or apartheid systems.³ Yet, such conduct often receives insufficient attention in efforts to end hostilities, prevent future similar conflicts and provide remedies and reparations to victims.⁴
4. Impairments to the enjoyment of Covenant rights in situations of armed conflict frequently reflect and reinforce structural inequalities, which may be based on a range of grounds identified by the Committee in its General Comment No. 20 as prohibited grounds of discrimination. This results in discrimination, marginalization, and socio-economic exclusion that may

¹ It also draws from knowledge of certain country situations with the ICJ has been engaged.

² United Nations Human Rights Council, *Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice* UN Doc A/HRC/61/26 (Advance unedited version) (16 February 2026), paras 3 & 21, in which the Council has noted Israel's occupation Palestinian Territory — the West Bank, including East Jerusalem, and Gaza institutionalizing longstanding patterns of systematic discrimination, leading to mass forcible transfer and related violations of economic, social, and cultural rights, including displacement, the widescale destruction of housing and other civilian infrastructure, including the healthcare system, thereby preventing return, available at: <https://www.un.org/unispal/document/human-rights-situation-in-the-occupied-palestinian-territory-including-east-jerusalem-and-the-obligation-to-ensure-accountability-and-justice-a-hrc-61-26/>.

³ UN Committee on Economic, Social and Cultural Rights, *General Comment No. 26 (2022) on land and economic, social and cultural rights*, UN Doc. E/C.12/GC/26, para 48 available at: <https://docs.un.org/en/E/C.12/GC/26>. Such impairments can result from, as examples: the destruction of infrastructure essential for the enjoyment of Covenant rights; displacement; restrictions on freedom of movement; disruption of essential services; and loss of livelihoods.

⁴ UN General Assembly, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of nonrecurrence, Fabián Salvioli, A/77/162 (14 July 2022), available at: <https://documents.un.org/doc/undoc/gen/n22/425/76/pdf/n2242576.pdf>. OHCHR, Nepal Conflict Report, 2012, available at: <https://www.ohchr.org/en/documents/country-reports/nepal-conflict-report>. This report sets out violations of international human rights law and international humanitarian law upon which Nepal's TJ process was based is limited in scope, as it has failed to bring out the broader structural and socio-economic harms caused by the conflict and therefore the ESCR violations experienced by victims of the conflict.

contribute to the outbreak and persistence of conflict.⁵ Similarly, in post-conflict and transitional justice (TJ) contexts, the failure to address impairments to the enjoyment of Covenant rights risk entrenching impunity and undermining the guarantees of non-recurrence.⁶

5. This submission focuses on the following issues:

- I.** Complementarity and continuous applicability of the Covenant and its interaction with IHL;
- II.** Covenant violations or abuses as crimes under international law;
- III.** Interdependence, interrelatedness and indivisibility of ESCR in the context of armed conflicts; and
- IV.** States obligations to respect, protect, and fulfil ESCR; and
- V.** Accountability, and redress in the context of TJ

6. Specific recommendations to the CESCR in respect of the content of the General Comment are provided throughout and stated in full in section VI at the end of this submission.

I. Complementarity and continuous applicability of the Covenant and its interaction with IHL

7. The International Court of Justice has affirmed that international human rights obligations including those under ICESCR apply concurrently with IHL obligations in situations of armed conflict.⁷ Similarly, the Human Rights Committee has made clear in respect of the International Covenant on Civil and Political Rights (ICCPR) that the Covenant “applies also in situations of armed conflict to which the rules of international humanitarian law are applicable”, and that the two bodies of law are “complementary, not mutually exclusive.”⁸

⁵ UN Committee on Economic, Social and Cultural Rights, *General Comment No. 20 (2009): Non-discrimination in economic, social and cultural rights (art. 2, para. 2 of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc. E/C.12/GC/20.

⁶ Ruben Carranza, “Relief, Reparations, and the Root Causes of Conflict in Nepal” (International Center for Transitional Justice, October 2012, available at: <https://www.ictj.org/sites/default/files/ICTJ-Nepal-Reparations-2012-English.pdf>; Dustin N. Sharp ed., “Justice and Economic Violence in Transition” (New York, Springer, 2013); Bishnu Raj Upreti and Ulrike Müller-Baker, ‘Livelihood Insecurity and Social Conflict in Nepal’ (South Asia Regional Coordination Office, Swiss National Centre of Competence in Research (NCCR) North-South Kathmandu 2010), available at: https://www.dsgz.geo.uzh.ch/pdfs/Upreti_Livelihoods.pdf.

⁷ International Court of Justice, *Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, ICJ Reports 2004, para 134; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, ICJ Reports 2005, paras 178–180, 216–220. See also African Commission on Human and Peoples’ Rights, *Commission Nationale des Droits de l’Homme et des Libertés v. Chad*, Communication 74/92, 1995; *Democratic Republic of Congo v. Burundi, Rwanda and Uganda*, Communication 227/99, 2003.

⁸ UN 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 (2004), para 11.

8. IHL and human rights law, including the ICESCR therefore operate as mutually reinforcing, continu regimes. The International Court of Justice further affirmed that the Covenant applies alongside IHL, without any qualification that one displaces the other or that IHL is *lex specialis*,⁹ in the sense of displacing Covenant obligations. Accordingly, conduct governed by IHL, such as attacks on civilian objects, including infrastructure like schools, housing, water and sanitation facilities, and agricultural areas, or denial of humanitarian access including humanitarian food aid, will simultaneously engage State parties' obligations under the Covenant. This complementarity is also reflected in the Committee's own jurisprudence.¹⁰
9. The primary rules applicable during the conduct of hostilities are set out in Additional Protocol I of the Geneva Conventions, which apply directly to international armed conflicts, and in customary IHL, which binds all parties to NIAC's as well. The ICRC's study of Customary IHL enumerates the relevant rules, including those governing the principles of distinction, proportionality, and precaution (Rules 1–24). When any such rule is breached, and that breach serves to impair the enjoyment of a Covenant right, this will also amount to a violation, or, in the case of a non-State armed group, an abuse of that Covenant right.¹¹
10. Another way by which the concomitant application of IHL rules and Covenant obligations is manifest is in the law of occupation. Under the 1907 Hague Regulations, the "occupying power" is required to respect the laws in force in the occupied country.¹² This includes obligations under the Covenant and the domestic laws giving effect to it. Accordingly, an occupying power bears Covenant obligations in respect of populations under its occupation, including under Articles 11–15 with respect to the rights to an adequate standard of living, health, and education.¹³

⁹ International Court of Justice, *Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, 2004, para 134.

¹⁰ UN CESCR, General Comment No. 14: The Right to the Highest Attainable Standard of Health (2000), paras. 34, 65; UN CESCR, Concluding Observations on Israel, UN Doc E/C.12/ISR/CO/3 (2011), paras 8, 18; CESCR, General Comment No. 15: The Right to Water (2003), para 21; CESCR, General Comment No. 4: The Right to Adequate Housing (1991), paras 7, 18, UNCESCR, *Substantive issues arising in the implementation of the International Covenant on Economic, Social and Cultural Rights: General Comment No. 12 (1999) on the right to adequate food* (or relevant General Comment), UN Doc. E/C.12/1999/5, para 19.

¹¹ UNCESCR, General Comment No. 7: The Right to Adequate Housing — Forced Evictions (1997), paras 5, 6, 12. For example, a direct or disproportionate attack resulting in the destruction of housing will amount to a forced eviction within the meaning of Article 11 of the Covenant. An attack on or destruction of a school will engage States parties' obligations under Article 13. Any Covenant right may potentially be engaged by unlawful conduct of hostilities.

¹² Hague Convention (IV) Respecting the Laws and Customs of War on Land and its Annex (1907), Art. 43.

¹³ ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, ICJ Reports 2004, para 134; *Armed Activities on the Territory of the Congo (DRC v. Uganda)*, ICJ Reports 2005, paras 178–180.

II. Covenant violations in the context of Crimes under International Law

11. Covenant violations or abuses and may also constitute crimes under international law, including war crimes, crimes against humanity (CAH), and genocide. They may also constitute harms experienced by victims and survivors of other conflict-related crimes, in respect of which the State's obligation to provide access to an effective remedy and reparations also applies.¹⁴ In particular, acts such as the destruction of crops, water supplies or other objects indispensable to survival may constitute the war crime of starvation as a method of warfare, or destruction of conditions of life calculated to destroy a group constituting genocide; while denial of access to education or healthcare may constitute inhumane acts or persecution as a crime against humanity.¹⁵ Accordingly, failure to discharge Covenant obligations should therefore not necessarily be understood as merely ancillary to crimes under international law, but as in some instances integral to their commission in both legal and factual terms.
12. In **Nepal**,¹⁶ widespread displacement, destruction of livelihoods, and denial of access to essential services formed part of the broader pattern of IHL and Covenant violations and abuses affecting civilian populations during the armed conflict (1996-2006) between the government and Communist Party of Nepal (Maoist) (CPN Maoists), a non-state armed group.¹⁷ These harms were not incidental but formed part of a broader pattern of violence undermining the socio-economic conditions necessary for survival.¹⁸
13. Direct or indiscriminate or disproportionate attacks on schools violated IHL protections for civilian objects while simultaneously constituting serious impairments to the enjoyment of the right to education under Article 13 of the Covenant. Forced displacement engaged State parties' obligations in terms of the right to adequate housing and standard of living, while enforced disappearances deprived households of breadwinners, triggering cascading impairments across the rights to education, health, employment, and social

¹⁴ Rome Statute of the International Criminal Court (1998), Arts. 6–8; ICJ, Practitioners' Guide No. 2 (2018 edition) available at: <https://www.icj.org/wp-content/uploads/2018/11/Universal-Right-to-a-Remedy-Publications-Reports-Practitioners-Guides-2018-ENG.pdf>; UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, A/RES/60/147 (2005).

¹⁵ Rome Statute, Arts 6–8.

¹⁶ OHCHR, Nepal Conflict Report, 2012.

¹⁷ ICJ, "The Place of Economic, Social and Cultural Rights in Nepal's Transitional Justice Process" (2026), available at: <http://icj.org/resource/nepal-integrating-economic-social-and-cultural-rights-into-nepals-transitional-justice-gaps-challenges-and-the-way-forward/>.

¹⁸ Ibid.

security.¹⁹ Demonstrating the sustained and interrelated ESCR harms rather than collateral effects of conflict, ICJ field research also documented range of long-term socioeconomic impacts on victims.²⁰

14. In **Sudan**, the current armed conflict (ongoing since April 2023), provides among the starkest contemporary illustrations of how Covenant rights may constitute or contribute to atrocity crimes. The UN Independent International Fact-Finding Mission for Sudan has documented conduct by both the Sudanese Armed Forces (SAF) and the Rapid Support Forces (RSF) that engages the Covenant,²¹ and in some instances constitutes war crimes and crimes against humanity.²²

15. The Fact-Finding Mission determined in February 2026 that RSF and allied forces had committed genocide, including through the underlying acts of: looting and destruction of homes and infrastructure; systematic destruction of the means of survival of the civilian population (amounting to violations of IHL and potentially inhumane acts as crimes against humanity); and deliberate starvation and denial of medical care (including the use of starvation of civilians as a method of warfare and potentially war crimes and/or crimes against humanity).²³

16. In the **DRC**, decades of conflict in the eastern provinces, driven in part by the illicit exploitation of natural resources, have resulted in the impairment of the enjoyment of Covenant rights,²⁴ potentially constituting atrocity crimes.²⁵ The systematic exploitation of natural resources has been identified as both a

¹⁹ Ibid, the ICJ Baseline Study documents that in cases of enforced disappearances, uncertainty arises regarding the fate and whereabouts of the disappeared person. The absence of official confirmation of life, or in cases of death the lack of death certificates, places families in a state of prolonged legal uncertainty, restricting access to benefits, inheritance, and social security, which depend on official documentation of the disappeared person's status.

²⁰ Ibid, pages 12–33.

²¹ The Sudanese Armed Forces (SAF) and the Rapid Support Forces (RSF) are the two main opposing military actors in Sudan's current conflict. The Sudanese Armed Forces (SAF) is the official national army of Sudan. The RSF is a formerly state-linked paramilitary force that has evolved into a non-State armed actor; it initially acted as a State-affiliated force and is alleged to have contributed to violations of rights, and it continues, as a non-State actor, to impair the enjoyment of Covenant rights.

²² Report of the Independent International Fact-Finding Mission for the Sudan, A/HRC/57/CRP.6 (23 October 2024). The Fact-Finding Mission documented, inter alia, large-scale destruction of residential homes, medical facilities, markets, food stores, communication and electricity infrastructure, water-pipes and water treatment plants (violations of ESCR; destruction of civilian objects as war crimes/CAH); a pattern of pillaging and looting (war crime of pillage; ESCR violations); destruction of objects indispensable to the survival of the civilian population (war crime; relevant to starvation as a method of warfare); and the deliberate use of starvation as a method of warfare (war crimes under IHL).

²³ Ibid.

²⁴ Report of the Independent International Fact-Finding Mission for the Sudan, A/HRC/61/77 (7 February 2026).

²⁵ UN Committee on Economic, Social and Cultural Rights (CESCR), *Concluding Observations on the Sixth Periodic Report of the Democratic Republic of the Congo* (28 March 2022) UN Doc E/C.12/COD/CO/6, available at: <https://docs.un.org/en/E/C.12/COD/CO/6>.

²⁶ UN News 'DR Congo: Surging violence as armed groups target civilians in the east, Human Rights Council hears,' (2025), available at: <https://news.un.org/en/story/2025/04/1161771>.

driver of conflict and a mechanism for depriving communities of their livelihoods directly engaging States parties' obligations under Articles 6 and 11 of the Covenant.²⁶

17. In **Ethiopia**, the Tigray conflict (2020–2022) involved ranges of violations and abuses.²⁷ The UN International Commission of Human Rights Experts on Ethiopia documented such acts as violations constituting crimes under international law.²⁸ These acts necessarily also engage obligations under the ICESCR with respect to the rights to food, health, and adequate housing.

III. Interdependence and indivisibility of ESCR in the context of armed conflict

18. The interdependence, interrelatedness and indivisibility of all human rights, including Covenant Rights, is well established and affirmed by all States in the 1993 Vienna Declaration and Programme of Action.²⁹ These principles are particularly significant in situations of conflict, where impairment of Covenant rights rarely occurs as discrete events but as interconnected harms affecting multiple rights simultaneously. The destruction of housing, for example, simultaneously affects access to health, education, livelihoods, and family life under Articles 11, 12, 13 and 10 of the Covenant respectively.
19. This interdependence has direct legal consequences: a single course of conduct may engage multiple, overlapping State parties' obligations under human right treaties, as well as obligations. IHL and international criminal law, including the Geneva Conventions and Additional Protocols, the Genocide Convention, and the Rome Statute. These overlapping frameworks require integrated approaches to prevention and protection, including in the design of accountability and redress mechanisms. Responses limited to isolated rights violations and abuses risk failing to address the full scope and cumulative impact of harm experienced by affected populations.³⁰

²⁶ ICC, Situation in the DRC (ongoing since 2004); ICC Prosecutor, Renewed Investigative Efforts in the DRC (14 October 2024) (priority focus on North Kivu since January 2022); and Amnesty International, 'Why is the DRC Wracked by Conflict?' (29 October 2024), available at: <https://www.amnesty.org/en/latest/campaigns/2024/10/why-is-the-democratic-republic-of-congo-wracked-by-conflict/>.

²⁷ Examples, direct attacks on health facilities (violations of IHL and right to health); looting and destruction of objects indispensable to the survival of civilian population, including medical equipment, farming equipment, livestock, and water systems (war crime of pillage and destruction of objects indispensable to survival; violations of ESCR); siege and suspension of essential services (collective punishment and violations of IHL, including potential war crimes); and restriction (de facto blockade) on humanitarian access (violations IHL and ESCR).

²⁸ International Commission of Human Rights Experts on Ethiopia, A/HRC/54/CRP.3 (13 October 2023).

²⁹ Vienna Declaration and Programme of Action (1993), para. 5; CESCR, General Comment No. 14: Right to Health (2000); CESCR, General Comment No. 4: The Right to Adequate Housing (1991).

³⁰ OHCHR, 'Protection of Economic, Social and Cultural Rights in Conflicts,' E/2015/59 (2016), paras 17–19.

20. Moreover, the Covenant violations in situations of armed conflict and post-conflict settings are deeply embedded in structural inequalities and other societal challenges directly related to ESCR, such as poverty. In many situations around the world patterns of marginalization, exclusion, and socio-economic deprivation have functioned as both drivers of conflict and amplifiers of harm during hostilities.³¹

IV. States obligations to respect, protect, and fulfil ESCR

21. State obligations under the Covenant to respect, protect and fulfil economic, social and cultural rights remain fully applicable in situations of armed conflict and in their aftermath. In operational terms, States have an obligation to: refrain from acts violating ESCR in the context of armed conflict regulate and prevent abuses by third parties, including non-State armed groups and other actors; and ensure, at a minimum, access to essential goods and services necessary for survival and dignity.³²

22. Moreover, these obligations entail that States to take positive measures to safeguard individuals and communities from conflict-related deprivation, exclusion and structural disadvantage.³³ States also have the duty to prevent foreseeable harm in situations of armed conflict.³⁴ This includes taking deliberate and effective steps to protect homes, schools, hospitals, public infrastructure and access to essential goods and services, while also addressing patterns of inequality, exclusion and deprivation that may both intensify the impact of conflict and contribute to the conditions in which violence emerges or recurs. The duty of prevention also entails the exercise of due diligence in areas where State control is limited.³⁵

23. These preventative obligations are also reflected in and reinforced under IHL, where the principles of distinction, proportionality and precaution require

³¹ African Union, African Union Transitional Justice Policy (2019).

³² UN CESCR, General Comment No. 14: The Right to the Highest Attainable Standard of Health (2000); CESCR, General Comment No. 15: The Right to Water (2003); CESCR, General Comment No. 4: The Right to Adequate Housing (1991), paras. 7, 18, UNCESCR, Substantive issues arising in the implementation of the International Covenant on Economic, Social and Cultural Rights: General Comment No. 12 (1999) on the right to adequate food (or relevant General Comment), UN Doc. E/C.12/1999/5, para 19.

³³ OHCHR, 'Protection of Economic, Social and Cultural Rights in Conflicts,' E/2015/59 (June 2016) paras 17-19, available at <https://www.ohchr.org/en/documents/thematic-reports/protection-economic-social-and-cultural-rights-conflict>.

³⁴ CESCR, General Comment No. 3: The Nature of States Parties' Obligations, para 1.; CESCR, General Comment No. 14: The Right to the Highest Attainable Standard of Health, paras 33-37.; ESCR, General Comment No. 15: The Right to Water, para. 21.

³⁵ CESCR, General Comment No. 24 on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities (2017), para 30; Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda), Judgment, ICJ Reports 2005, paras. 178-180; Ilaşcu and Others v Moldova and Russia, App No 48787/99, ECtHR, Judgment of 8 July 2004, para 333.

parties to a conflict to, among others, distinguish between civilian objects and military objectives and to take all feasible precautions to avoid incidental loss of civilian life and damage to civilian objects and to protect them from the effects of attacks.³⁶ Specific objects and zones are also protected, including hospital zones and cultural property.³⁷

V. Accountability and redress in the context of TJ

24. Comparative experiences from around the world reveal a persistent gap in addressing Covenant violations within accountability frameworks. Even where the terms of reference of TJ processes are broad enough to include investigation of ESCR violations, or where reference is made to ESCR in such schemes, TJ processes have tended to pay little to no attention to Covenant violations.³⁸

25. Additionally, criminal justice proceedings – which constitute one tool in TJ processes – often focus on the conduct of the perpetrators and related elements of the crime(s), rather than the corresponding harms experienced by the victims and survivors, which often include Covenant violations. Therefore, even where criminal justice processes may have a corresponding reparations process for victims and survivors, access to effective remedies reparations for Covenant and related violations of remains limited or non-existent.

26. The situation in **Nepal** is instructive. Many Covenant rights are broadly justiciable under Nepal's 2015 Constitution and have been enforced through domestic courts, which also frequently draw on international human rights law binding on Nepal, including those emanating from ICESCR.³⁹ Yet Nepal's TJ efforts have typically focused on civil and political rights violations such as unlawful killings, enforced disappearances, and torture while leaving the Covenant dimensions of harms largely unaddressed, notwithstanding evidence of widespread forced displacement, domicile, and systematic destruction of educational institutions. Many victims of conflict-related ESCR violations therefore remain outside formal accountability and reparations processes.⁴⁰

27. In terms of promoting accountability, the Nepal experience reveals the need for sustained engagement by the Committee to ensure accountability for

³⁶ ICRC, Customary International Humanitarian Law, Rule 7: The Principle of Distinction between Civilian Objects and Military Objectives, Rule 15: Principle of Precautions in Attack and Rule 22: Principle of Precautions against the Effects of Attacks. More generally, see Rules 1 to 24.

³⁷ Ibid, Rule 35: Hospital and Safety Zones and Neutral Zones and Rule 38: Attacks against Cultural Property.

³⁸ Input from the International Center for Transitional Justice (ICTJ) to the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, available at: <https://www.ohchr.org/sites/default/files/documents/issues/truth/cfi-escr-trans-just/subm-economic-social-cultural-cso-14-intern-ictj-ctj.pdf>.

³⁹ *Suman Adhikari et al. v Government of Nepal*, Supreme Court of Nepal, Writ 069-WS-0057 (26 February 2015); *Madhab Basnet and Others v Office of the Prime Minister and Council of Ministers*, Supreme Court of Nepal (1 June 2007).

⁴⁰ ICJ Nepal Baseline Study (n 17), page 40.

violations of the Covenant in the context of armed conflict. Earlier reporting cycles addressed conflict-related violations,⁴¹ but subsequent engagement has not maintained the same level of focus. Nepal's 2011 periodic report to the CESCR acknowledged the conflict's impact on the enjoyment of Covenant rights;⁴² yet Nepal's most recent report submitted in February 2025 makes no reference to the ongoing TJ process or to obligations to address conflict-related ESCR violations. This General Comment presents an opportunity to clarify that such violations remain a priority within the scope of State reporting and review until effectively addressed, which in many instances takes decades.

28. In **Sierra Leone**, the Truth and Reconciliation Commission (TRC) acknowledged poverty and inequality as driving factors of the conflict and made recommendations for reparations that included educational support, healthcare, and skills training for survivors of sexual violence.⁴³ Yet implementation fell critically short. The TRC Act itself did not explicitly use the term "reparations", directing instead that the Commission address "the needs of victims", a framing that, in practice, allowed socio-economic harms to be treated as welfare measures rather than enforceable legal entitlements.⁴⁴

29. In the **DRC**, the International Criminal Court's reparations proceedings in the *Katanga* and *Ntaganda* cases offer both a partial model and a cautionary example.⁴⁵ The gaps in these cases illustrate the limits of a reparations approach under the Rome Statute as a vehicle for ESCR compliant remedies. Such limited approaches are not explicitly designed to address structural and collective dimensions of harm and therefore cannot fully effectively provide redress and reparations for violations of ESCR.

30. Remedy and Reparation legal frameworks must therefore treat measures towards the respect, protection and fulfilment of ESCR not as discretionary or

⁴¹ ICJ Nepal Baseline Study (n 6) 41; CESCR, Third Periodic Reports Submitted by States Parties, Nepal (29 October 2012) UN Doc E/C.12/NPL/3, para 318.

⁴² ICJ Nepal Study (n 6) chapter 3.1; CESCR, Third Periodic Reports Submitted by States Parties, Nepal (29 October 2012) UN Doc E/C.12/NPL/3, para 318; Government of Nepal, Fourth Periodic Report on the Implementation of the ICESCR (February 2025) UN Doc E/C.12/NPL/4.

⁴³ Sierra Leone Truth and Reconciliation Commission, Final Report, 2004, Vol 2.

⁴⁴ Ibid; International Centre for Transitional Justice, Leaving Behind the Forgotten: Transitional Justice and Prevention in Sierra Leone (June 2021).

⁴⁵ ICC, *Prosecutor v Katanga*, Reparations Order (2014); Symbolic Ceremony Marking End of Reparations in the Katanga Case, Bunia, DRC (24 April 2024) (USD 1 million reparations order, including income-generating assets such as cattle, complemented by Trust Fund for Victims with support from Germany and the Netherlands). ICC, *Ntaganda* Reparations Addendum (14 July 2023) (reparations liability assessed at USD 31.3 million for approximately 10,500 victims; reparations conceived in purely monetary and rehabilitative terms, with no structural ESCR component). In the *Katanga* case, reparations of USD 1 million, including income-generating items such as cattle chosen by victims as emblematic of their Iturian identity and livelihoods, were provided through a ceremony in Bunia in April 2024. In *Ntaganda*, reparations liability was assessed at USD 31.3 million for approximately 10,500 victims. These represent meaningful steps toward redress. However, the reparations in both cases were framed in individual compensatory and rehabilitative terms and did not address the structural dimensions of ESCR violations, such as the displacement of communities; the destruction of agricultural livelihoods; and the collapse of healthcare systems that characterized the atrocities in Ituri.

humanitarian, charitable or symbolic measures, but as legally grounded rights with corresponding State obligations. Remedies must, for example, meet standards of adequacy, accessibility, and sustainability,⁴⁶ regardless of whether the underlying harm is characterized as a Covenant violation, or other human rights violation, or as is often the case, a combination of both. The scope of reparations must include structural and material measures addressing long-term socio-economic impacts.⁴⁷ Meaningful accountability for Covenant violations is essential for recovery, reconciliation, and prevention of recurrence.

VI. Recommendations

31. Considering the issues discussed above, the ICJ recommends to the Committee that the proposed General Comment:

- a. Affirms the continuous applicability of the ICESCR in situations of armed conflict, including situation of occupation and post-conflict settings, clarifying that Covenant obligations remain binding in all circumstances and are not displaced by the existence of hostilities.
- b. Affirms the concurrent applicability and complementarity between IHL and the ICESCR, emphasizing that the two frameworks apply and reinforce one another, and that conduct regulated under treaty and customary IHL also often engages Covenant rights and States' corresponding obligations. The Committee should enumerate the IHL obligations that are most typically engaged in situations of armed conflict, including the conduct of hostilities and the situation of occupation, referencing the Geneva Conventions and Additional Protocols, as well as customary international humanitarian rules as affirmed by the ICRC.
- c. Clarifies that violations and abuses of Covenant rights may constitute underlying or constituent elements of crimes under international law, including war crimes, crimes against humanity, and genocide, affirming that such Covenant violations must be investigated and redressed.
- d. Clarifies that, even where violations of the Covenant do not constitute crimes under international law, they may constitute harms resulting from the commission of crimes under international law that are relevant to the right of victims and survivors to access effective remedies and reparations.

⁴⁶ United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation (2005).

⁴⁷ ICJ Nepal Baseline Study (n 17); amended TRC Act (n 13) sec 23(2) (reparations may include free education, medical treatment, housing, employment), highlighting issues relating to: land restitution; provision of mental health services; access to education (including for former child soldiers); pension schemes for widows of the disappeared and other support schemes for dependents; housing reconstruction; and sustained livelihood support.

- e. Clarifies the legal implications of the interrelatedness, interdependence and indivisibility of Covenant rights and other human rights in conflict settings, including by emphasizing that violations and abuses often engage multiple, overlapping obligations and require integrated approaches to protection, accountability, and reparation, as well as measures addressing underlying structural inequalities.
- f. Elaborates how the obligations to respect, protect, fulfill, and prevent are operationalized in conflict contexts, including on the continued application, in particular, of minimum core obligations.
- g. Provides guidance on the integration and mainstreaming of the Covenant within TJ frameworks and processes, clarifying that violations must be recognized as legally cognizable harms within truth-seeking, accountability, and reparations processes, and that the definitions “victims,” and “survivors” as well as the mandate of relevant mechanisms, should explicitly encompass socio-economic harms in the form of Covenant violations.
- h. Reaffirms unequivocally that States have an obligation to ensure access to effective remedies and reparations for Covenant violations in conflict and post-conflict settings, including by emphasizing that such measures be rights compliant, prompt, adequate, sustainable, and capable of leading to full reparation.⁴⁸ This includes provision for, among others: restitution of land and housing; access to healthcare and education; psychosocial support; and livelihood support.

⁴⁸ ICJ, *The Right to a Remedy and Reparation for Gross Human Rights Violations: A Practitioners’ Guide* (Revised ed, ICJ 2018), available at: <https://www.icj.org/wp-content/uploads/2018/11/Universal-Right-to-a-Remedy-Publications-Reports-Practitioners-Guides-2018-ENG.pdf>.