

## **Demolition and Confiscation Incidents during the COVID-19 Outbreak in the oPt: Legal Implications**

Over the past weeks during the COVID-19 pandemic, protection incidents involving demolitions of residential structures, confiscation of medical equipment and food aid and the targeting of WASH infrastructure crucial to combat the further outbreak of the pandemic have been reported in the occupied Palestinian Territory (oPt). The reported incidents took place on top of the already fragmented and de-developed healthcare system of the oPt, the lack of adequate infrastructure for the Palestinians, including the water network, as well as the absence of appropriate planning and zoning laws in the oPt. In light of those circumstances, Diakonia wishes to share its publications and analysis to clarify the protection, chiefly under international humanitarian law (IHL), to which the targets of those incidents are entitled. Their protection should also be seen in the light of the obligation of Israel, as an Occupying Power, essential during the COVID-19 outbreak, to provide for the well-being of the protected population and for the health and life of the individuals in the oPt as well as for the duty to adopt and apply preventive measures necessary to combat the spread of the disease. In particular, the resources listed below clarify the following main points:

### **1. Can Israel, as OP, confiscate or demolish housing units and WASH infrastructure in the oPt?**

IHL protects housing units and WASH infrastructures during an occupation from destruction. Israel, as OP, is not allowed to demolish private or public property unless it is absolutely necessary for military operations, and hence, in relation to actual fighting. Moreover, demolitions cannot be justified on the basis of a planning regime which inherently violates international law and contravenes the OP's obligations under IHL. Furthermore, the destruction of housing units and WASH infrastructure, either directly or indirectly through the destruction of Palestinian livelihoods and by putting at risk access to water, education, and basic shelter, may result in forced displacement which is both a violation of IHL and a war crime (meaning that the individual perpetrators are criminally liable).

The OP is also under a general obligation not to seize private property, with the exception of war materials and therefore, it has to refrain from confiscating objects such as drinking water installations, including rainwater-harvesting cisterns.

## **2. Can Israel, as OP, confiscate or demolish medical facilities and goods in the oPt?**

Medical facilities are entitled to special protection under IHL. Civilian hospitals such as community clinics as well as medical transports (such as ambulances) exclusively assigned to medical purposes must be respected and protected, including by not attacking them, in all circumstances. The only situation in which medical buildings and transports can lose their protection, is if they are being used to commit acts harmful to the OP outside of their humanitarian function, such as when weapons are stored in hospitals or if hospitals are used as military command centres. Even in such case, significant precautionary measures must be taken. Moreover, the OP has an obligation to maintain and ensure medical and hospital establishment and services with the cooperation of local authorities. Requisition of civilian hospitals can only be temporary and must be preceded by arrangements for the needs of the civilian population. Medical goods such as emergency tents for medical facilities and medicines should not be seized unless the requirements of the population have been taken into account.

## **3. Can Israel, as OP, confiscate or demolish relief for the population in the oPt?**

The OP cannot confiscate or demolish humanitarian relief essential for the occupied population in need. In fact, the OP has the obligation to provide for the basic needs of the local community and, where it is unable or unwilling to do so, it must agree to and facilitate effectively relief schemes, including consignments of medical and hospital stores and food-stuffs. Hence, the OP should not arbitrarily impede the delivery of hygiene kits, ventilators, food and other supplies for the oPt population. Although the OP retains certain control rights, those may never have the effect of unduly delaying or rendering impossible the delivery of the relief. Relief personnel must also be respected and protected and their freedom of movement, essential to the exercise of their functions, must be ensured.

## **4. What should third states and the EU do in case of protection incidents related to unlawful confiscations and demolitions?**

Third states i.e. states not party to the conflict, and the EU should neither encourage nor aid or assist in an IHL violation. Additionally, they should take all reasonable measures to end violations of the Geneva Conventions, which can include inter alia, political dialogue, public statements, non-public demarches, and measures of conditionality relating to trade and assistance.

In particular, third states must investigate, search for, and prosecute individuals who have committed or ordered grave violations, known as grave breaches under the Geneva Conventions, such as, for instance, extensive destruction and appropriation of property not justified by military necessity and forcible transfer. Moreover, donor states and the EU that provide assistance that is subsequently unlawfully confiscated or demolished are entitled to request full reparation for violations committed by the OP along with the demand to halt the violation and not to repeat it.

## **Useful resources**

### ***Protection of housing units and WASH infrastructure***

- [Demolishing the Future: Continued Property Destruction in the Occupied Palestinian Territory \(IHL Report, 2019\)](#)
- [Planning to Fail: The Planning Regime in Area C of the West Bank: an international law perspective \(IHL Report, 2014\)](#)
- [Destruction of houses and property during occupation \(destruction of private property and punitive demolitions\) \(Fact Sheet, 2014\)](#)

### ***Protection of medical activities (personnel, facilities, and material)***

- [Health-Related Duties and Obligations of an Occupying Power During a Pandemic: The Occupied Palestinian Territory and the COVID-19 Outbreak \(Fact Sheet, 2020\)](#)
- [Protections of Medical Personnel, Transport and Facilities during Situation of Armed Conflict \(Fact Sheet, 2019\)](#)

### ***Humanitarian assistance and the protection of humanitarian personnel***

- [The Humanitarian - Development Divide: A False Dichotomy? \(IHL Brief, 2018\)](#)
- [The Obligation to Provide, and the Right to Receive, Development assistance in Occupied Territories, including in Situations of Prolonged Occupation \(Expert Opinion by T. Marauhn and I. Stegmiller, 2016\)](#)

### ***Role and obligations of third states and the EU***

- [Obligations specific to the European Union and EU member states: Rights and obligations of the EU and its Member States to ensure compliance with IHL and IHRL in relation to the situation of the oPt \(Expert Opinion by M. Bothe, 2018\)](#)
- [Everyone's Business: Third Party Responsibility and the Enforcement of International Law in the oPt \(IHL Report, 2016\)](#)