

Health-Related Duties and Obligations of an Occupying Power during a Pandemic: The Occupied Palestinian Territory and the COVID-19 Outbreak

Factsheet, April 2020

As of the 3rd of April 2020, the World Health Organization (WHO) reported 171 cases of COVID-19 in the occupied Palestinian territory (oPt), 159 of which in the West Bank and 12 in Gaza.¹ The COVID-19 pandemic poses an unprecedented challenge for the world. There are particular identified factors and vulnerabilities of the Palestinian population living in the oPt that are likely to exacerbate the impact of the disease.

In general, the prolonged occupation of the West Bank, including East Jerusalem, and Gaza has strongly contributed to the solidification of a fragile health-system, including the shortage of medical supplies.² In particular, specific policies and practices of the Occupying Power (OP) have increased the vulnerability of some groups likely to be greatly impacted and at risk during the pandemic. These groups include the population in Gaza living under a blockade, the refugee population living in highly populated areas particularly in refugee camps, those currently held in some form of detention as well as groups with specific needs due to age or health status.

The protection of the population living in the oPt, in the face of the pandemic, is determined by the standards set out primarily under International Humanitarian Law (IHL), the body of law applicable during armed conflicts, including military occupation. Please note that *IHL applicability is not suspended due to the COVID-19 outbreak* and it requires that the OP protect the health and life of the occupied population, in addition to regulating numerous other aspects of the administration of the occupied territory.

Moreover, the protection offered by IHL is complemented by the International Human Rights Law (IHRL) rules that are applicable during peace-time and armed conflicts and that are binding on the OP as well as on the Palestinian authorities.³ IHRL requires the protection and realization of the rights to life, to the highest attainable standard of physical and mental health

¹ WHO, Coronavirus disease 2019 (COVID-19) Update 18 occupied Palestinian territory.

² On the occupied status of the Palestinian territory, see art. 42 HR and, among others, UN Secretary General Report A/HRC/34/38 (2017); UN Security Council Res. 2334 (2016); ICJ, Advisory Opinion on the Construction of a Wall in the Occupied Palestinian Territory (2004) at 78.

³ On the applicability of IHRL to the OP, see, for example, UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 Report A/HRC/40/73.

and, inextricably related to it, the right to safe, accessible and affordable water of the population living under occupation. Moreover, it demands that, among others, the right to a private life, freedom of movement, the right to education and the right to fair trial are respected by the OP and Palestinian authorities in their responses to the COVID-19 outbreak, unless derogations have been lawfully adopted.⁴

This factsheet aims to clarify the main obligations of the OP under IHL that specifically concern the protection of life and health of the Palestinian population living under military occupation. This tool should be used by interested stakeholders to promote compliance with the relevant norms toward relevant authorities.

Guide to the Footnotes

CIHL: ICRC Study on Customary International Humanitarian Law. The rules recalled in the factsheet derive from general practice accepted as law which has been identified by the ICRC.

GC I: First Geneva Convention of 1949

GC III: Third Geneva Convention of 1949

GC IV: Fourth Geneva Convention of 1949

HR: 1907 Hague Regulations concerning the Laws and Customs of War on Land

ICCPR: International Covenant on Civil and Political Rights (CCPR: Committee)

ICESCR: International Covenant on Economic, Social and Cultural Rights (CESCR: Committee)

ICJ: International Court of Justice

Ensure a Functioning Health System

The Palestinian people living in the oPt are entitled to be humanely treated and protected.⁵ The OP is primarily responsible for the well-being of the population of the occupied territory.⁶

It has the duty to ensure and maintain, to the fullest extent of the means available to it, medical and hospital establishments and services, public health and hygiene with the cooperation of Palestinian authorities.⁷ Importantly, this includes *a duty to adopt and apply the prophylactic and preventive measures necessary to combat the spread of contagious diseases and epidemics*.⁸ Such obligation is crucial in the face of the COVID- 19 outbreak and it may include a duty to share accessible information on prevention measures.

⁴ Art. 4 ICCPR; the ICESCR does not contain a derogation clause

⁵ Art. 27 GC IV; CIHL rule 87.

⁶ Art. 43 HR.

⁷ Art. 56 GC IV.

⁸ Art. 56(1) GC IV.

The OP must also ensure, to the fullest extent of the means available to it, medical supplies for the population, and, if the resources available to the population are inadequate, it is obliged to bring in necessary items.⁹ Medical supplies may not be requisitioned for use by the population of the OP and any requisition must take the requirements of the civilian population in the occupied territory into account.¹⁰

Water infrastructure, which is critical during the COVID-19 outbreak as a resource central to taking the recommended preventative measures, must not be attacked, destroyed, seized, removed or rendered useless.¹¹

The obligation of the OP to provide for a health system and health supplies in the occupied territory under IHL is complemented and strengthened by IHRL that requires it to take deliberate, concrete and targeted steps towards progressive realization of the right to health of the Palestinian population while ensuring at least a minimum level of the underlying determinants of health such as water and sanitation facilities, medicines and health-care, including for persons deprived of freedom.¹² The OP is also required under IHRL to address factors that may jeopardize life such as life-threatening diseases, to provide a national public health strategy on the basis of epidemiological evidence as well as urgent medical care in case of epidemics and measures to prevent, treat and control epidemic and endemic diseases.¹³

Allow and Facilitate Relief Operations

The above IHL obligations to secure medical services and supplies must be ensured by the OP to the fullest extent of the means available to it. However, if the oPt population is inadequately supplied, the OP also has an obligation to agree to and to facilitate relief schemes which are impartial and conducted without any adverse distinction (relief consignments do not by themselves discharge the OP of its responsibilities to provide medical supplies).¹⁴ Hence, *the OP should not arbitrarily impede the delivery of hygiene kits, ventilators and other supplies for the oPt population* and it should ensure that relief operations can take place adjusting COVID-19-related movement restrictions. Moreover, although the OP has a right of control over relief schemes, it may be argued that where there is a well-founded fear that confiscation or destruction of external assistance would follow from the OP's exercise of the right of control

⁹ Art. 55(1) GC IV.

¹⁰ Art. 55(2) GC IV.

¹¹ Art. 46 HR; CIHL rule 54.

¹² See art. 12 ICESCR; CESCR General Comment 14 paras 12 and 30; CESCR General Comment 3 para. 2.

¹³ See arts. 11 and 12 ICESCR; art. 6 ICCPR; CESCR General Comment 14 including para. 16; CESCR General Comment 15; CCPR General Comment 36 para. 26.

¹⁴ Arts 23, 59 and 60 GC IV; CIHL rule 55.

based on a history of deliberate and persistent breaches, exceptionally, implementing agencies may bypass an OP's right of control.¹⁵

Impartial humanitarian organizations, including the ICRC, can offer their services and should be allowed to operate in the occupied territory during the COVID-19 outbreak.¹⁶ Humanitarian relief personnel must be respected and protected and their freedom of movement, essential to the exercise of their functions, must be ensured and can be temporarily limited only in case of imperative military necessity.¹⁷

Similarly, the OP must guarantee the protection of relief consignments which cannot be diverted from their intended purpose, except in case of urgent necessity, in the interest of the population in the occupied territory and with the consent of the Protecting Power.¹⁸ *Property belonging to relief organizations should not be confiscated or destroyed* unless for reasons of imperative military necessity nor can it be attacked during military operations.¹⁹

Respect and Protect Medical Activities

Medical units and transports belonging to the armed forces and civilian hospitals must be respected and protected in all circumstances.²⁰ Such protection can be lost if they are being used, outside their humanitarian function, to commit acts harmful to the OP outside of their humanitarian function.

Even in such a case significant precautionary measures must be adhered to.²¹ Any requisition of civilian hospitals can only be temporary and must be preceded by arrangements for the needs of the population whereas the material and stores of civilian hospitals cannot be requisitioned if they are necessary for the needs of the Palestinian population.²² Medical personnel exclusively assigned to medical duties, whether belonging or responding to the armed forces or operating in civilian hospitals, must be respected and protected in all circumstances unless they commit acts harmful to the enemy, outside of their humanitarian functions.²³ Moreover, medical personnel cannot be punished for performing medical duties that are

¹⁵ ICJ, Advisory Opinion on the Legal Consequences for States of the Continued Presence of South Africa in Namibia (1970) para. 91.

¹⁶ Art. 9 GC I; art. 9 GC III; arts 10 and 63 GC IV.

¹⁷ CIHL rules 31 and 56.

¹⁸ Arts 59(3) and 60 GC IV; CIHL rule 32.

¹⁹ Art. 46 HR; art. 53 GC IV; for protection from attack CIHL rule 7.

²⁰ Arts 19 ff and arts 35 ff GC I; art. 18 GC IV; CIHL rules 28 and 29.

²¹ Art. 21 GC I; art. 19 GC IV; CIHL rules 25, 28 and 29.

²² Art. 57 GC IV.

²³ Arts. 24-26 GC I; art. 20 GC IV; CIHL rule 25.

compatible with medical ethics.²⁴

Finally, even though restriction on freedom of movement may be imposed in the occupied territory for health reasons related to the spread of COVID-19, all medical services should be allowed to continue functioning and ambulances should not be affected by the movement restrictions when requested to intervene.²⁵

Ensure Enhanced Protection to Groups Specifically at Risk

In the treatment of persons protected by IHL by the OP, no adverse distinction can be made on the basis of, among others, religion or political opinion.²⁶ However, IHL allows a distinction to be made to give priority to people who most urgently need care and it requires some groups of people to be granted specific protection.

Civilians who are sick, infirm and the elderly must benefit from particular protection and respect.²⁷ Hence, the OP should take special care to ensure their well-being throughout the fight against the new coronavirus taking into account the likelihood that those groups will be disproportionately affected by the crisis.

Similarly, *wounded and sick* members of armed forces must be respected and protected and should receive the medical care required, with the least possible delay.²⁸

Children should also be entitled to specific respect and protection and the proper working of the institutions devoted to their care and education must be facilitated by the OP.²⁹

Persons deprived of liberty, in addition to retaining under IHRL the right to the highest attainable standard of health, also enjoy specific protection under IHL. They must be provided with, among others, adequate medical attention and water and must be hosted in premises affording guarantees of hygiene and healthfulness so to prevent the spread of the COVID-19 disease.³⁰ Concerning medical attention, detention facilities should have infirmaries and isolation wards and medical inspections should be carried out regularly, at least once a month, also with a view to detecting contagious diseases.³¹

²⁴ CIHL rule 26.

²⁵ See HCJ 477/91, Association of Israeli-Palestinian Physicians for Human Rights v. Minister of Defence et al., 45(2) PD 832, 834–6.

²⁶ Art. 12 GC I; art. 16 GC III; art. 13 and 27(3) GC IV; CIHL rules 88 and 110.

²⁷ Art. 16 GC I; CIHL rule 138.

²⁸ Art. 12 GC I; CIHL rules 110 and 111.

²⁹ Art. 50 GC IV; CIHL rule 135.

³⁰ Arts 22, 29-31 GC III; arts 76, 85, 91 and 92 GC IV; CHL rules 118 and 121.

³¹ Arts 30-31 GC III; arts 91-92 GC IV.

The OP may be encouraged to release people deprived of freedom in light of their health conditions.³² In any case, it must ensure that all people deprived of liberty who need special treatment are admitted to institutions that can provide specialized care and that interned civilians should receive the same level of medical care as the general population.³³ The case of inadequate medical treatment for people deprived of freedom can amount to inhuman treatment by the OP.³⁴

The exceptional health crisis resulting from the spread of COVID-19 intensifies the vulnerability of the Palestinian population living under a prolonged military occupation. In such a context, IHL obligations to protect the health and life of the occupied population are particularly relevant and it is of utmost importance that all relevant actors demand compliance with those by the OP to, in particular, secure that:

- The OP ensures the functioning of a health system to address the spread of the disease with the cooperation of the Palestinian authorities and refrains from confiscating, destroying and removing medical and other facilities and supplies essential to the survival of the occupied population in the face of enhanced risks posed by the COVID-19 outbreak.
- The OP allows rapid and unimpeded passage to relief necessary for the Palestinian population such as hygiene kits, ventilators, medical personnel and medical trainers. In addition, the OP should lift all restrictions of movement of people and good that are not in conformity with international law. In particular access to medical services and treatment must be facilitated.
- The OP acts to avoid that people deprived of freedom under its control are exposed to the risk of contracting the COVID-19 and ensures that they receive adequate medical treatment, including outside the detention facility, in case of need.

³² Arts 109 ff GC III; art. 132 GC IV.

³³ Art. 30(2) GC III; art. 91(2) GC IV.

³⁴ See CIHL clarification to rule 90.