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Human rights situation in Palestine and other occupied Arab territories

Written statement* submitted by Norwegian Refugee Council, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[29 January 2021]

* Issued as received, in the language(s) of submission only.



Complementary Application of International Humanitarian Law and International Human Rights Law in the Occupied Palestinian Territory and Nondiscrimination Obligations Applied to Property Rights, Education, and Healthcare

There is increasing consensus that international human rights law (IHRL) continues to apply during times of armed conflict and belligerent occupation, such as the one engulfing Palestinians since 1967. The International Court of Justice has repeatedly reaffirmed IHRL continued application, and so have human rights treaty bodies, with explicit support for this determination found in several human rights conventions.

The Norwegian Refugee Council (NRC) has called – subsequent to expert legal advice¹ - for a systemic integration of international humanitarian law (IHL) and IHRL in the context of the Occupied Palestinian Territory (OPT). This approach entails a vision of a coherent international legal system, and allows for greater avenues through which rules of IHRL may be brought to bear. Even where not directly applicable, rules of IHRL can be used to inform the interpretation of terms and concepts within IHL, and the law of belligerent occupation.

Pursuant to this mode of interpretation, we call for the application of the rule(s) that provides a higher level of protection to Palestinians in occupied territory. We had observed that in some instances, the positive obligations under IHL are obligations of result, while the corresponding obligation under IHRL may not have a positive dimension in those circumstances, or it may entail only a 'best efforts' standard.

To the extent IHL imposes positive obligations, those positive obligations are co-extensive with the factual control exercised by the occupying power. Article 43 of the Hague Regulations of 1907 requires occupying powers to take measures to ensure public life, order and safety, to the extent possible. This is constrained by the "laws in force in the country", which includes IHRL, but may not include positive obligations under IHRL. Like the law of occupation, IHRL follows the factual projection of power and authority and continues to regulate it; it does not authorize any expansion of authority or derogation beyond what is permitted by international law.

Both IHL and IHRL prohibit individual or mass forcible transfers and deportation. IHL prohibits the occupying power from carrying out individual or mass forcible transfers as well as the deportation of persons from occupied territory, either to its own territory or that of another state, regardless of the motive. Corollary to that prohibition, the occupant may not transfer members of its own population to occupied territory.

IHRL reinforces these prohibitions, including in the manner in which they affect the right to property, and the right to freedom of movement, and the right to choose a residence. In particular, the Convention on the Elimination of All Forms of Racial Discrimination (CERD) guarantees the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the rights to "freedom of movement and residence within the border of the State" and to "own property".

This obligation reinforces the IHL prohibition on forced transfers, and would also permit an inference of bad faith where an occupying power seeks to justify exceptions based on the narrow safety and security grounds permitted by IHL, yet imposes such measures discriminatorily.

Both IHL and IHRL require that the occupying power ensure the protection and education of children. IHRL serves a critically important role in providing rules concerning the education of children and additional protection. IHRL provisions help inform the concept of the proper working of education institutions. In this regard, it should be recalled that the Convention on the Rights of the Child (CRC) is binding not only upon Israel and the State

¹ <https://bit.ly/2Yex4ZQ>.

of Palestine, but also upon all United Nations (UN) Member States, save one. As such, it stands to reason that its standards, near universally accepted, should be among the benchmarks for defining the proper functioning of educational institutions for children.

NRC research² showed that between January 2018 and June 2020 Palestinian children in the West Bank contended with a deluge of attacks on education, at a crushing pace of 10 attacks per month, on average. Across the 30-month reporting period, NRC analysis of a multi-source dataset found that 296 attacks against education by Israeli forces or settlers and settlement private security guards took place during 235 separate incidents. Attacks affected educational property or facilities, often in the context of the issuance of demolition orders. In 41 incidents, Israeli authorities destroyed, seized, or placed at risk of demolition school structures, property, equipment, or materials. As of January 2021, 52 Palestinian schools are at risk of full or partial demolition due to pending demolition orders, 44 of which are located in Area C, under the direct authority of the Israeli Military Commander.

NRC research further demonstrated the lack of a sufficient quantity of educational facilities and programs, including sanitary conditions, trained staff, safe drinking water, and adequate materials, and infrastructure for learning. It likewise exhibited persistent challenges to Palestinian children reach to education, either by attendance at a reasonably convenient geographic location or via modern technology, such as access to a distance learning program, with the latter becoming markedly pronounced with its introduction as part of COVID-19 prevention measures.

According to the UN Educational, Scientific and Cultural Organization, inadequate internet infrastructure and access and power outages – prevalent in the Gaza Strip and rural parts of the West Bank - formed the main structural barriers to children benefiting from the distance learning program. It further highlighted the disproportionate impact of distance learning on vulnerable Palestinian communities, including children in Area C, due to low accessibility to online material and availability of computers or smartphones to some students.

As with the right to education, the CERD, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the Convention on the Rights of Persons with Disabilities (CRPD) all require nondiscrimination in relation to the right to health.

The nondiscrimination requirements are particularly important as they are not subject to a best efforts standard. As soon as measures are taken - or not taken - in a discriminatory manner, the requirements of the nondiscrimination treaties, will have been violated.

In the OPT, nearly 2,000 people have succumbed to COVID-19 by January 2021. The World Health Organization risk assessment remains very high, with the overall case fatality rate (the proportion of deaths among identified confirmed cases) for the OPT at 1.1 percent, against 0.7 percent in Israel, with Gaza accounting for 52 percent of all active cases in OPT, followed by the West Bank governorates of Nablus and Ramallah.

Israel has administered COVID-19 vaccines faster than any country in the world, with more than 2.9 million people receiving the first dose of the vaccine, and another 1.6 million completing the second dose (32 and 18 percent of the population, respectively, by January 2021).

Considering the rollout of vaccines in Israel, UN human rights experts called on Israel, the occupying power, to ensure swift and equitable access to vaccines for the Palestinian people under occupation, and had also called on Palestinian authorities in the West Bank and Gaza to cooperate with Israel in the implementation of a comprehensive vaccination program.

Under IHL, Israel is obligated to provide for the health and wellbeing of Palestinians living under its occupation and actual authority. The Fourth Geneva Convention specifically confers on an occupying power the duty of ensuring the adoption and application of the prophylactic and preventive measures necessary to combat the spread of contagious diseases and epidemics to the fullest extent of the means available to it, and in cooperation

² <https://bit.ly/3qTfDtM>.

of national and local authorities. Per its aforementioned obligations under IHRL, Israel must also respect, protect and fulfill the right to health of the population in the OPT without discrimination.

This apportioning of responsibilities is particularly relevant in relation to OPT, where bilateral agreements between the Government of Israel and the Palestine Liberation Organization have established a framework of cooperation. The agreements establish that Israel and the Palestinians exchange information regarding epidemics and contagious diseases, and cooperate in combating them. To date, Israel has refused to publicly acknowledge its legal duties in relation to the prevention and mitigation of COVID-19 in OPT, and for the requisite care of Palestinian patients.

Equitable and consistent allocation procedures of the vaccine should be informed by normative obligations found in IHL and IHRL, and public health needs, communicated publicly, and subject to revision based on new evidence or other relevant circumstances or information. The international community of states bears a responsibility to affirm that only through a comprehensive vaccination program that reaches everyone between the Jordan River and the Mediterranean on the basis of equality that the defeat of the pandemic will be possible.

Finally, the significant facet of the simultaneous applicability of IHRL is that it brings with it the scrutiny of the human rights treaty bodies - co-extensive with the applicability of their respective treaties - and that of the Human Rights Council, to rights adversely affected in the OPT and the world over.
