

Gaza: Health situation in the Gaza Strip

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N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

Health situation in the Gaza Strip

[Source: *Health situation in the Gaza Strip*, B'Tselem, 1 January 2014, available at: http://www.btselem.org/gaza_strip/medical_system]

[1] The siege that Israel has imposed on the Gaza Strip since Hamas took over control of the security apparatus there in June 2007 has greatly harmed Gaza's health system, which had not functioned well beforehand. Many services and specialist and life-saving treatments are not available to Palestinians inside Gaza, and since the siege began, access to medical care in hospitals outside Gaza has decreased. [...]

Effect of the reduction in fuel supply [2] The reduction, and sometimes total stoppage, of the supply of fuel to Gaza for days at a time has led to a decrease in the quality of medical services, reduced use of ambulances, and serious harm to elements needed for proper health, such as clean drinking water and regular removal of solid waste. Currently, some 30 percent of the Gaza Strip's residents do not receive water on a regular basis. [3] For example, in early 2008, diagnostic and dental services in 32 of the 56 emergency medical centers run by the Palestinian Ministry of Health stopped due to lack of fuel to operate the generators. In late February, 23 of the Ministry's 56 ambulances and seven of the 40 Red Crescent ambulances ceased operation because of shortage of fuel. 55,000 vials for vaccination of infants might go

bad if the fuel supply to pharmacies is not renewed. Visits to outpatient clinics dropped by 29 percent since the beginning of 2008, which might delay diagnosis of illness.

Lack of medicines and medical equipment [4] The lack of medical equipment and medicines in Gaza is steadily increasing. According to figures of the World Health Organization, in January 2008, 19 percent of necessary medicines were lacking, primarily those needed in surgery and in emergency cases, antibiotics for initial care of children, and cancer drugs. 31 percent of vital medical equipment is lacking too. There is also a grave shortage of replacement parts for equipment and of disposable items, such as bandages, syringes, and plaster for casts.

Reduced access to medical services outside the Gaza Strip [5] Israel has cut back on issuing permits to enter the country for the hundreds of patients each month who need immediate life-saving treatment and urgent, advanced treatment unavailable in Gaza. The only crossing open to patients is Erez Crossing, through which Israel allows some of these patients to cross to go to hospitals inside Israel, and to treatment facilities in the West Bank, Egypt, and Jordan. Some patients not allowed to cross have referrals to Israeli hospitals or other hospitals. Since Hamas took over control of the Gaza Strip, the number of patients forbidden to leave Gaza 'for security reasons' has steadily increased. [6] The WHO reported that, in 2007, approval was given for 81.5 percent - 7,176 of 8,803 - of the requests submitted by patients in Gaza for an exit permit via Erez Crossing. According to the report, in the first three months of 2007, which preceded the Hamas takeover, Israel approved 90 percent of the requests; in the last three months of 2007, following the Hamas takeover, the figure dropped to 69 percent. [7] In June 2007, the High Court of Justice rejected the petition of Physicians for Human Rights, an Israeli organization, against the defense establishment's improper policy, which distinguishes between persons in immediate life-threatening danger whom the local health system is incapable of treating, and patients whom the defense establishment considers 'at risk of harm to their quality of life,' such as treatment to save a person's eyesight or to prevent amputation. Patients in the latter category generally do not receive permits. [...] [8] According to the Palestinian Health Ministry and the WHO, a few dozen Palestinians died after Israel delayed or prohibited their exit from Gaza to receive medical treatment (a special report of the WHO, of April 2008, listed 32 cases of patients who died between October 2007 and early March 2008 while waiting for specialist medical treatment outside the Gaza Strip[]). In that some of these patients were suffering from a terminal illness, their deaths cannot necessarily be attributed to delay in granting the permit or to denial of the request. However, it is clear that these patients' right to optimal and rapid treatment was infringed, and that delay in the permit, or refusal to grant it, impaired their quality of life, their chances to be cured, and their possibility to live a longer life. [...]

Israel's responsibility [9] Despite its 'disengagement' from the Gaza Strip, in September 2005, Israel continues to hold effective control of many aspects of life in Gaza, including the crossing points. This scope of control imposes on Israel responsibility for the safety and welfare of the residents there, in accordance with the laws of occupation specified in the Hague and Geneva Conventions. Regardless of the questions of the legal status of the Gaza Strip, international humanitarian law and international human rights law require Israel

to protect civilians in time of armed conflict, safeguard wounded and sick persons, prevent deterioration in the humanitarian situation, and enable the shipment of necessary medicines and provision of an adequate standard of health. In its overall actions relating to the Gaza Strip and its residents, Israel gravely breaches the right of the residents to optimal medical care inside Gaza and access to medical care outside the area. [...]

Discussion

I. Classification of the Situation and Applicable Law

1. (Paras [1] and [9]) Using the information provided in this document, how would you classify the situation in Gaza Strip? Under IHL, what criteria have to be fulfilled for territory to be considered occupied? Are these criteria fulfilled in the present case? Even after the disengagement from the region in September 2005? Can a situation of occupation exist when enemy forces are no longer present on the occupied territory? As a result of your answers to the above, which set of rules is, in your opinion, applicable to Gaza Strip? (HR, Art. 42; GC I-IV, Common Art. 2)
2. Under International Human Rights Law (IHRL), is Israel bound to respect the right to health in the Gaza Strip?

II. Healthcare System in the Gaza Strip

3. (Paras [2]-[4] and [9]) What obligations does Israel have under IHL regarding the healthcare system in Gaza Strip? Does IHL impose an obligation on Israel to supply medicines, medical equipment and fuel to the Gaza Strip? Not to hinder their supply through territory or waters it controls? (HR, Art. 43; GC IV, Arts 55, 56 and 59-62)

III. Access to Medical Services Outside the Gaza Strip

4. (Paras [5]–[9]) Does Israel have an obligation under IHL to provide the population in the Gaza Strip access to the healthcare system in Israel, the West Bank, Egypt or Jordan? Is it justified under IHL to prevent certain individuals from leaving the Gaza Strip for ‘security reasons’? If their health condition is not life threatening but poses a ‘risk of harm to their quality life’? Would such measures be justified under IHRL? (HR, Art. 43; GC IV, Art. 49(1) and 56)