

International humanitarian law and COVID-19: Vaccinations in territories under the control of non-state armed groups

Equitable access to vaccines is one of the most important steps in overcoming the COVID-19 pandemic. There is a shared understanding that effective protection against infection can only be achieved by vaccinating widely. To be effective, vaccines must reach all parts of society, including groups of people who are at risk of being overlooked or excluded from national vaccination plans, such as detainees, displaced people and people living under the control of non-state armed groups, as well as other marginalized communities.

The International Committee of the Red Cross (ICRC) estimates that between 60 million and 80 million people live under the exclusive control of non-state armed groups, and many more live in areas in which non-state armed groups operate. In non-international armed conflict, international humanitarian law (IHL) is the cornerstone of the international legal framework to protect people affected by conflict of this type. This document summarizes the ICRC's views on some of the main provisions of IHL that may be relevant to vaccinating people living under the control of non-state armed groups, complemented by human rights law.

Providing vaccines in territories under the control of non-state armed groups



To effectively curb the spread of the pandemic, vaccines must reach everyone, including people living under the control of non-state armed groups. In non-international armed conflict, IHL does not contain a specific obligation for parties to armed conflicts – state or non-state – to vaccinate people living under their control. However, each party to a conflict is responsible for providing their basic needs. This obligation includes basic health care, and vaccinations to contain the spread of epidemics or pandemics should be considered a part of basic health care. IHL also requires parties to armed conflict to care for the wounded and sick, and to safeguard the health and hygiene of detainees. These obligations require all parties to take measures to protect the wounded, the sick and detainees against communicable diseases and epidemics.

In addition, under the [human right to health](#), states are obliged to take the necessary steps to prevent, treat and control epidemics, and to ensure health care is provided for everyone under their jurisdiction, without discrimination. With regard to people living in areas under the control of non-state armed groups, this obligation has been interpreted as requiring states to take – to the extent possible – measures to ensure that these people's human rights are protected. While this obligation must be understood within the reality that some people live beyond their reach, governments must nonetheless take all the measures that they can, such as including these populations in national vaccination plans and facilitating access for humanitarian and health-care organizations. Where non-state armed groups exercise stable control over a territory and are able to act like a state authority, it may also be said that they have a *de facto* responsibility to respect and protect the right to health.

Common Art. 3 GC I-IV; AP II, Art. 5; ICRC Customary IHL Study, Rules 110 and 121.

Humanitarian access to provide vaccines



Armed conflicts often have a devastating impact on the ability of authorities to provide for the basic needs of civilians, including their health. If a party to an armed conflict is unable to ensure the basic needs of a population under its control – including its medical needs – it must consent to the offer of an impartial humanitarian organization to carry out humanitarian activities. IHL requires all parties to the conflict to allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need. This also means that a state party to a conflict must allow and facilitate humanitarian relief for civilians living under the control of a non-state armed group, including the easing of

administrative or other restrictions on vaccinations organized by impartial humanitarian organizations. While consent to such relief operations cannot be withheld unlawfully, parties to a conflict do have the right to impose measures of control, such as verifying the nature of the assistance.

Under IHL, humanitarian relief personnel and objects used for humanitarian relief – which may include the staff and equipment needed for vaccination campaigns – must be respected and protected. Most importantly, this means that they must not be attacked and their safety must be ensured.

Common Art. 3 GC I–IV; AP II, Art. 18(2); ICRC Customary IHL Study, Rules 31, 32 and 55; ICRC Commentary of 1987, para. 4885; ICRC Commentary of 2016, paras 834 and 839.

Services provided by impartial humanitarian organizations, such as the ICRC



Engaging in dialogue with all parties to armed conflict – state and non-state – has long been a defining feature of humanitarian organizations' work. Dialogue aims to ensure protection and assistance for people affected by armed conflict. In non-international armed conflict, IHL explicitly mandates impartial humanitarian organizations, such as the ICRC, to offer their services to the parties to the conflict. The delivery of humanitarian assistance, including vaccines, in a territory under the control of a non-state armed group does not affect the legal status of the parties to the conflict. In other words, humanitarian engagement and dialogue do not legitimize a non-state armed group.

Armed conflicts over the past decade have shown that counterterrorism measures can diminish the ability of impartial humanitarian organizations, including the ICRC, to carry out their activities. This is especially the case in areas where armed groups designated as terrorists are active. To ensure that everyone benefits from vaccines, regardless of where they live, it is essential to preserve a humanitarian space in all places affected by armed conflict. Counterterrorism measures must comply with IHL and must not impede the exclusively humanitarian activities of impartial humanitarian organizations.

Common Art. 3 GC I–IV; AP II, Art. 18(1); ICRC Commentary of 1987, para. 4892; ICRC Commentary of 2016, paras 805 and 869.

Protecting health-care professionals and facilities involved in vaccinations



Health-care professionals and facilities – be they from governments, local communities or humanitarian organizations – are essential to roll out vaccination programmes. Under IHL, all civilians, including civilian health-care professionals, are protected against attack, unless and for such time as they take a direct part in hostilities. IHL also prohibits punishing any person for performing medical duties compatible with medical ethics, and compelling a person engaged in medical activities to perform acts contrary to medical ethics. For example, it would be unlawful to punish health-care professionals, such as community health workers, for carrying out vaccination campaigns in a territory under the control of a non-state armed group. Moreover, IHL provides specific protection to civilian or military medical personnel, units and transports that are exclusively assigned to medical purposes by the competent authorities, including when they are working to prevent disease by distributing or administering vaccines. This means that they must not be attacked and must be protected against any form of harm. They are also entitled to use the emblem of the red cross, red crescent or red crystal.

Common Art. 3 GC I–IV; AP II, Arts 9 and 11–13; ICRC Customary IHL Study, Rules 1, 25, 26, 28 and 29; ICRC Commentary of 2016, paras 731, 768–769 and 772–777.
