

# International humanitarian laws: Applicable to all or a privilege for some?

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There is an intrinsic connection between genocide and colonialism where both concepts are in close proximity and are based on the logic of elimination. The fact that an active genocide of the Palestinian people continues in 2024 is extremely disturbing. A plethora of human rights laws and principles complement and reinforce the protections afforded under international humanitarian law. These laws were developed in order to prevent historical atrocities from repeating themselves. As history is re-written, it is submitted that these laws, while good on paper, are not being put into practice in the case of Palestine. This article reflects on the application of specific international humanitarian laws, namely protecting healthcare, preserving nutrition and safeguarding children during times of conflict, and analyses how these protections are being flouted in the case of Gaza.

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There is no denying the brutality raining down on Gaza. As death, destruction, starvation, disease and a catastrophic man-made humanitarian crisis are unconvincingly sold to society as norms of war, a lingering question that recurrently surfaces is whether international humanitarian laws are applicable to all or a privilege for some. The Global North, which prides itself on developing international benchmarks for human rights, has undeniably shown the world that its moral compass requires prompt scrutiny at the very least. It is the proverbial underdogs in the Global South who have positioned themselves firmly behind the very principles claimed to have been developed by players in the Global North, who are now holding them to account.

This article outlines the current devastation occurring in Gaza, considering South Africa (SA)'s case at the International Court of Justice (ICJ) that resulted in a provisional measures order against Israel. It reflects on the application of specific international humanitarian laws, namely protecting healthcare, preserving nutrition and safeguarding children during times of conflict.

## Background and context

December 2023 marked the 75th anniversary of the Genocide Convention, which was drafted in the aftermath of World War II and the Holocaust. Following the referral of the war in Gaza to the International Criminal Court in November 2023, SA's application was lodged with the ICJ in December. It was brought against Israel for contravening the Genocide Convention and resulted in a provisional measures order against Israel, finding that SA's claim that Israel was committing genocide in Gaza was sufficiently 'plausible' to justify the Court's extraordinary intervention.<sup>[1]</sup> The ICJ imposed several duties on Israel to prevent a genocide which was plausibly identified by the court. The ruling and provisional measures order set out by the ICJ marked a significant step in holding Israel accountable for its actions in Gaza

and brought renewed hope to a desperately hopeless situation. However, this frantic optimism was short lived, and the fact that Israel continues to destroy Gaza with little regard for the provisional measures order comes as no surprise. This seems to be their *modus operandi* – ignore and continue with impunity.<sup>[2]</sup> Respected human rights organisations such as Amnesty International, Human Rights Watch and the United Nations (UN) (among others), including Israeli human rights organisations, have repeatedly documented the actions and policies of the Israeli government as constituting violations of international law, crimes against humanity and apartheid. Instead of providing evidence to dispute this documented evidence, the Israeli government instead rubbishes the claims from these respected human rights entities and labels their critiques as being antisemitic.<sup>[3]</sup>

For example, a 2020 excerpt released from the UN Office of the High Commissioner for Human Rights regarding the illegal occupation of Palestine reads as follows:

'The United Nations has stated on many occasions that the 53-year-old Israeli occupation is the source of profound human rights violations against the Palestinian people. These violations include land confiscation, settler violence, discriminatory planning laws, the confiscation of natural resources, home demolitions, forcible population transfer, excessive use of force and torture, labour exploitation, extensive infringements of privacy rights, restrictions on the media and freedom of expression, the targeting of women activists and journalists, the detention of children, poisoning by exposure to toxic wastes, forced evictions and displacement, economic deprivation and extreme poverty, arbitrary detention, lack of freedom of movement, food insecurity, discriminatory law enforcement and the imposition of a two-tier system of disparate political, legal, social, cultural and economic rights based on ethnicity and nationality [my emphasis]. Palestinian and Israeli human rights defenders, who peacefully bring public attention to these violations,

are slandered, criminalised or labelled as terrorists. Above all, the Israeli occupation has meant the denial of the right of Palestinian self-determination ... The international community has solemn legal and political responsibilities to defend a rules-based international order, to oppose violations of human rights and fundamental principles of international law and to give effect to its many resolutions critical of Israel's conduct of this protracted occupation. In particular, *states have a duty not to recognise, aid or assist another state in any form of illegal activity* [my emphasis], such as annexation or the creation of civilian settlements in occupied territory.<sup>[2]</sup>

Yet, a report released by the UN Human Rights Office in February 2024, which covers a 1-year period between November 2022 and October 2023, indicates that approximately 24 300 housing units in existing settlements in the West Bank were 'advanced or approved; the highest on record since monitoring began in 2017'<sup>[4]</sup> causing the illegal occupation of Palestine to continue. Bringing us back to the current situation in Gaza – in February 2024, Amnesty International condemned the USA for its veto to a UN Security Council resolution demanding an immediate ceasefire. It purported that in doing so, the USA had effectively provided a green light to more killings and the mass suffering of Palestinians. It further condemned Israel's allies (for example, Canada, the UK and Germany) for supporting Israel's actions, including its flouting of the ICJ ruling, referring to their support as indefensible and a possible violation of their obligation to prevent genocide.<sup>[5]</sup> SA's case against Israel at the ICJ joins another case, seeking an Advisory Opinion on Israel's prolonged occupation and apartheid practices in Palestine.<sup>[6]</sup> As Israel continued to destroy Gaza (which destruction has caused Gaza to turn a different colour from space),<sup>[7]</sup> SA once again turned to the ICJ in March 2024 to enforce additional emergency measures against Israel.<sup>[8]</sup> SA's new request was compelled by new facts and changes in the situation, particularly that of widespread starvation 'brought about by the continuing egregious breaches of the Convention on the Prevention and Punishment of the Crime of Genocide ... by the State of Israel ... and its ongoing manifest violations of the provisional measures ...'<sup>[8]</sup> of the ICJ as indicated on 26 January 2024. In this application, SA highlights how the ongoing crisis has *inter alia* led to the starvation of Palestinians in Gaza, claiming the lives of one of society's most vulnerable groups – children. Notably, it is the countries of the Global South who have played remarkable roles in these international proceedings.

The issues to be concerned about regarding the current war in Gaza are endless. However, of considerable concern are the staggering numbers of children who have been killed in Gaza between October 2023 and February 2024 (over 12 300), which is more than the number of children killed in 4 years of conflict around the world.<sup>[9]</sup> This number is steadily growing, in part as a result of forced starvation of the population by the intentional blockade of humanitarian aid, including access to medical assistance and equipment. Impeding Palestinians' access to healthcare is not new.<sup>[10-12]</sup> What is astounding is the human rights double standard that we blatantly see unfolding, propelled by indirect messages from international superpowers that Palestinians have no human rights, including the right to access healthcare, which goes hand in hand with the realisation and protection of other rights including the right to nutrition and the rights of children as a vulnerable group.

## International humanitarian laws and their application during situations of conflict Healthcare under international law

The right to health is enshrined in the Universal Declaration of Human Rights, several international treaties, and the Constitution of the World Health Organization (WHO). This right encompasses access to healthcare services, as well as factors such as clean water, nutrition, housing and a healthy environment. It was first pronounced in the 1946 WHO Constitution, the preamble to which states that 'the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being, without distinction of race, religion, political belief, economic or social condition.'<sup>[13]</sup> Health was included as an aspect of the right to an adequate standard of living in the 1948 Universal Declaration of Human Rights.<sup>[14]</sup> The 1966 International Covenant on Economic, Social and Cultural Rights is widely considered as the cornerstone of international human rights law, in terms of the protection of the right to health. It affirms the 'right of everyone to the enjoyment of the highest attainable standard of physical and mental health.'<sup>[15]</sup> Article 12 of the Covenant outlines steps to be taken by State Parties to achieve the realisation of this right, which includes provision for the reduction of infant mortality and for the healthy development of the child, and the creation of conditions that would assure to all medical service and medical attention in the event of sickness. Israel is a member of the WHO and the UN, and a signatory to the Covenant.<sup>[16]</sup>

In early 2023, the WHO launched two reports that analysed data on barriers to the right to health for Palestinians in the West Bank, including east Jerusalem, and the Gaza Strip between 2019 and 2021. These reports overtly draw connections between the fragmentation of the Palestinian people, the permit regime, physical obstacles to movement and protection gaps, and health inequities and barriers to healthcare provision and access to health in occupied Palestine.<sup>[10]</sup> Barhoush and Amon<sup>[11]</sup> further revealed the methodical violation of Palestinians' right to health in occupied Palestine by Israel since the occupation began in 1967, resulting in a form of 'medical apartheid' where Palestinians encounter significant barriers to realising their fundamental right to health. Their analysis consisted of evidence-based assessments and reviews.

The 1949 Geneva Conventions are at the core of international humanitarian law. They are international treaties that establish standards of international law for humanitarian treatment in war, regulate the conduct of armed conflict, and seek to limit its effects. There are four Conventions; however, the Fourth Convention relative to the Protection of Civilian Persons in Time of War<sup>[17]</sup> seems to be most relevant to this discussion. The Convention requires that parties to a conflict refrain from attacking the wounded, the sick and healthcare workers offering care.<sup>[17]</sup> Article 18 of the Fourth Convention,<sup>[17]</sup> which is most relevant to the protection of vulnerable groups and healthcare workers during conflict, stipulates that civilian hospitals organised to give care to the wounded and sick, the infirm and maternity cases may under no circumstances be the object of attack, but shall at all times be respected and protected by the parties to the conflict. Article 20 goes on to state that persons regularly and solely engaged in the operation and administration of civilian hospitals, including the personnel engaged in the search for, removal and transporting of and caring for wounded and sick civilians, the infirm and maternity cases, shall

be respected and protected. Hospitals, medical staff, ambulances and their personnel are therefore specifically protected under international humanitarian law. Israel is a State Party to the Geneva Conventions.<sup>[18]</sup> By February 2024, more than 600 incidents of violence against, or obstruction of access to, healthcare had been recorded in Gaza since October 2023, with fewer than half of Gaza's remaining hospitals partially functional.<sup>[19]</sup> In its first explicit call for a ceasefire since Israel began its military offensive in Gaza, the UN Security Council on 25 March 2024 adopted a resolution demanding an immediate ceasefire during Ramadan and called for the immediate and unconditional release of all hostages. The US did not veto the resolution (a shift from its previous position), but rather abstained from voting.<sup>[20]</sup> Despite this resolution, the relentless violence continues. As of 1 April 2024, Gaza's largest hospital, al-Shifa Hospital, has been left in ruins following a 2-week operation by the Israeli military, which saw about 300 people dead in and around the hospital vicinity during the 2-week period. The structural damage appears beyond repair and has been described as another deliberate attack against the healthcare sector, leading to the destruction of the largest medical complex in Gaza City.<sup>[21]</sup> Coupled with the collapse of the healthcare system are the high levels of food insecurity in Gaza, which have had a severe impact on the health of the remaining population, with critical effects on those who are most vulnerable.

### Nutrition during times of conflict

On 18 March 2024, the Integrated Food Security Phase Classification released an update following a food security analysis conducted in Gaza during December 2023. It indicates that the conditions necessary to prevent famine have not been met, and that the latest evidence confirms that famine is imminent in the northern governorates and projected to occur any time between mid-March and May 2024.<sup>[22]</sup> Essentially, people will continue starving to death, with children being the most severely affected. International humanitarian law complements human rights norms regarding the right to adequate food by prescribing certain conduct and prohibiting certain behaviour to prevent the lack of food or to deny access to food during situations of armed conflict. One of the basic principles of international humanitarian law in situations of armed conflict is that parties must distinguish between the civilian population and combatants and between civilian objects (for example, foodstuffs, agricultural areas, crops, livestock, drinking water installations and supplies and irrigation works) and military objectives. In addition, parties must only direct their operations against military objectives. The targeting of civilians and civilian objects is forbidden.<sup>[23]</sup> Furthermore, starvation of civilians as a method of warfare or combat is expressly prohibited. Article 23 of the Fourth Geneva Convention<sup>[17]</sup> obliges State Parties to allow the free passage of certain types of goods (including all consignments of medical and hospital stores and objects necessary for religious worship) intended for the civilian population belonging to another State Party, even if the latter is its adversary. The rule was specifically designed to deal primarily with humanitarian assistance in blockade situations. It further permits the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children aged under 15, expectant mothers and maternity cases. UN human rights experts have warned that 'Israel is destroying Gaza's food system and using food as a weapon against

the Palestinian people.'<sup>[24]</sup> Families have resorted to eating grass in northern Gaza, while animal feed (which people turned to as a last resort to make bread) is becoming increasingly scarce.<sup>[25]</sup> With regard to people dying from starvation, Belgian Prime Minister Alexander de Coe describes Israel's tactics as 'inadmissible.'<sup>[26]</sup> It has become essential to allow for the safe passage of aid to enter Gaza. However, since January 2024, the UN Human Rights Office has documented more than two dozen attacks on civilians waiting for desperately needed aid. In the most recent and deadliest incident, which has been dubbed the 'flour massacre', crowds of Palestinians who gathered to collect flour were fired upon by Israeli troops. At least 112 people were killed on 29 February 2024, and 760 injuries were reported. This brutal attack came after humanitarian aid into Gaza City and northern Gaza was denied for over a month.<sup>[27]</sup> According to the Human Rights Office, if Israel cannot provide aid, it 'has the obligation to facilitate humanitarian relief activities, including by ensuring the conditions of safety required for such activities.'<sup>[28]</sup> On 28 March 2024, the ICJ ruled that Israel must allow more humanitarian aid into Gaza, including food, water, electricity, fuel, shelter, clothing, and hygiene and sanitation requirements, as well as medical supplies and medical care to Palestinians.<sup>[29]</sup> Despite this ruling, there are still reports that Israel continues to block aid into the famine-stricken region.<sup>[30]</sup>

### Protecting children as a vulnerable group

Article 25 of the Universal Declaration of Human Rights states that motherhood and childhood are entitled to special care and assistance.<sup>[14]</sup> Children under international humanitarian law enjoy general protections as persons not taking part in hostilities and special protections as a vulnerable group. A report of the Secretary-General for Children and Armed Conflict issued on 11 July 2022<sup>[31]</sup> already found that there was an increase in grave violations against children, including an increase in the number of children killed and maimed by Israeli and Palestinian armed groups, an increase in the number of children detained by Israel, and an increase in physical violence directed against these children during detention. Article 77 of Protocol I additional to the Geneva Conventions<sup>[32]</sup> stipulates that 'Children shall be the object of special respect and shall be protected against any form of indecent assault.' Apart from allowing the free passage of relief intended for children under 15 and maternity cases (Article 23), measures for the welfare of children are further outlined in Article 24 of the Fourth Geneva Convention.<sup>[17]</sup> They include that children aged under 15, who are orphaned or separated from their families as a result of the war, are not left to their own resources, and that their maintenance, the exercise of their religion and their education are facilitated under all circumstances. There is therefore a direct duty to protect children against the consequences of war and maintain their welfare, yet children continue to die at an unprecedented rate in Gaza as a result of Israeli airstrikes, indiscriminate bombing and malnutrition, and in some instances just for being children. For example, Rami al-Halhouli, a 12-year-old Palestinian boy, was shot dead by an Israeli border police officer for playing with fireworks, after breaking his fast during the holy month of Ramadan. Israel's National Security Minister Itamar Ben-Gvir hailed the officer who shot Rami as a 'hero and a warrior' and branded Rami a 'terrorist'.<sup>[33]</sup>

Amid increased public outrage, and with the current situation in Gaza being described as 'apocalyptic',<sup>[34]</sup> 'catastrophic',<sup>[35]</sup> 'in a state of acute trauma'<sup>[36]</sup> and requiring 'urgent action',<sup>[37]</sup> there have been

recent reports that the Israeli military will proceed with a ground assault on Rafah. Of these reports, the WHO's Director-General Tedros Adhanom Ghebreyesus voiced his 'grave concern', going on to say that '... the 1.2 million people in Rafah do not have anywhere safe to move to ... There are no fully functional, safe health facilities that they can reach elsewhere in Gaza ... In the name of humanity, we appeal to Israel not to proceed and instead to work towards peace.'<sup>[38]</sup>

## Discussion

Colonialism has its roots deeply set in a legacy of acquiring land and attaining a racist standard of 'civilisation' through discrimination and force. Historically, the impacts of colonialism are well documented, with severe effects on the health, social, economic and cultural experiences of the indigenous population.<sup>[39]</sup> Of the 'might is right' outlook, Raymond Suttner<sup>[40]</sup> writes: '... that was the case in the 19th century when many states were colonised and before the establishment of the United Nations and adoption of its Charter in 1945. In the earlier time of colonial conquest, territories could be seized as colonial conquests and settlements, and that was legally permissible. In truth, the practice of the Israeli state is in closer conformity to that earlier understanding of international law than the later developments that have ensued.'

There is an intrinsic connection between genocide and colonialism where both concepts are in close proximity and are based on the logic of elimination.<sup>[41]</sup> For example, the Namibian genocide, often referred to as the 'forgotten genocide', was orchestrated by German colonial forces over a 4-year period (1904 - 1908) after the Herero and Nama rebellion over German seizures of their land and cattle. This genocide almost exterminated the native population of Namibia.<sup>[42]</sup> At the time of writing this article, over 32 000 Palestinians, most of whom are women and children, have been killed in Gaza<sup>[20]</sup> and over 73 000 injured amid the destruction and shortage of vital necessities. These numbers do not include those still buried or unrecovered under the rubble. According to the UN, 85% of Gaza's population has been internally displaced, while 60% of the infrastructure has been damaged or destroyed. A crippling blockade of food, clean water and medicine<sup>[42]</sup> is causing thousands more to die from starvation, malnourishment and inadequate medical care. Severely injured patients have been trapped inside the few remaining hospitals in Gaza (with extreme limitations on their functions), owing to medical evacuations being halted. There are no intensive care units operating in northern Gaza, resulting in deaths of Palestinians with major injuries as a result of Israeli airstrikes.<sup>[43]</sup> New mothers who are unable to breastfeed their babies naturally because of malnutrition caused by the blockade of humanitarian aid are being forced to turn to artificial infant formula.<sup>[44]</sup> However, there are extreme shortages of infant formula and nappies.<sup>[45]</sup> With imminent famine on the horizon, and the hopes of an end to the hostilities dwindling as each day passes, those who are not killed by attacks during the conflict are likely to starve to death.

## Conclusion

The fact that an active genocide of the Palestinian people continues in 2024 is extremely disturbing. A plethora of human rights laws and principles complement and reinforce the protection afforded by international humanitarian law. These laws were developed in order to prevent historical atrocities from repeating themselves. As history

is re-written, it is submitted that these laws, while good on paper, are not being put into practice in the case of Palestine. There is no doubt that Israel is continuing to flout international humanitarian laws with impunity. It is also directly contravening the provisional measures order of the ICJ. According to Soni,<sup>[46]</sup> 'Gaza has shone a spotlight on a global system that is historically-flawed and now epically failing ... What is needed now is the moral courage to apply the principles of international law.' What is also needed is the courage to actively criminalise violations of international humanitarian laws and judiciously prosecute perpetrators who continue to flout them. Failing to do so will continue to provide the impression that international humanitarian laws are only a privilege for some.

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