



## **COVID-19 and Human Rights: Upholding the Right to Health in Myanmar's Conflict Areas**

The onset of COVID-19 has created law and policy challenges for governments around the world as they struggle to respond to the pandemic's public health and economic impacts. Individuals and communities in areas of conflict are especially vulnerable to these impacts, which compound existing discrimination, conflict-related violence and associated human rights violations. This is the case in Rakhine state, Chin state and other parts of Myanmar where ethnic armed groups are engaged in active hostilities with the Myanmar Army. Access to healthcare and public health information is particularly crucial in such contexts. Unfortunately, the Government of Myanmar has yet to take needed steps to end restrictions on access to information, and put a ceasefire into place – measures which would protect communities and facilitate efforts to stop the spread of the virus.

This briefing paper examines the human rights situation in areas of conflict in Myanmar through the lens of the right to health, with reference to other engaged rights such as access to information. It will focus, in particular, on the ongoing Internet restrictions in nine townships in Rakhine and Chin states and the killing of a WHO employee in Rakhine state. The paper will set out the applicable international law on the right to health, including the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC), to which Myanmar is a party. This analysis complements the ICJ's previous freedom of expression analysis and statements on the Internet shutdown,<sup>1</sup> and a forthcoming analysis of Myanmar's international law obligations in the context of the conflict between Myanmar and the Arakan Army.<sup>2</sup>

### **Background**

On 11 March 2020, the World Health Organization officially declared COVID-19 a pandemic.<sup>3</sup> In response to the outbreak, the UN Secretary-General appealed for a global ceasefire in hostilities.<sup>4</sup> The UN Secretary-General highlighted the indiscriminate impact of the virus, stressing the urgency of putting armed conflict "on lockdown" and focusing on the "true fight of our lives" – COVID-19.

Myanmar has a long history of ethnic conflict involving dozens of ethnic armed organizations across the country, dating back to its independence movement.<sup>5</sup> A non-international armed conflict presently exists between the State and certain armed groups, including the Arakan Army.<sup>6</sup> Hostilities between Myanmar and the Arakan Army intensified throughout 2019 and continue to the present day despite the COVID-19 outbreak. Members of Myanmar's diplomatic community, civil society and

<sup>1</sup> International Commission of Jurists, "Dictating the Internet: Curtailing Free Expression, Opinion and Information Online in Southeast Asia" (2019); International Commission of Jurists, "Myanmar: Government must lift online restrictions in conflict-affected areas to ensure access to information during COVID-19 pandemic," 10 April 2020; International Commission of Jurists, "Accountability and Myanmar: dialogue with UN Special Rapporteur," 10 March 2020, [https://www.icj.org/search/?fwp\\_search=myanmar&submit=Search](https://www.icj.org/search/?fwp_search=myanmar&submit=Search)

<sup>2</sup> This is a follow-up to the International Commission of Jurists' 2017 publication, "Myanmar: Questions and Answers on Human Rights Law in Rakhine State: Briefing Note, November 2017," <https://www.icj.org/myanmar-rule-of-law-must-drive-responses-to-rohingya-crisis/>

<sup>3</sup> World Health Organization, "WHO Director-General's opening remarks at the media briefing on COVID-19," 11 March 2020, <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020> (Accessed 22 April 2020)

<sup>4</sup> UN News, "COVID-19: UN chief calls for global ceasefire to focus on 'the true fight of our lives,'" 23 March 2020, <https://news.un.org/en/story/2020/03/1059972> (Accessed 22 April 2020)

<sup>5</sup> Thant Myint-U, *The Hidden History of Burma: Race, Capitalism, and The Crisis of Democracy in the 21<sup>st</sup> Century*, Norton, USA, 2019; Melissa Crouch, *The Constitution of Myanmar: A Contextual Analysis*, Hart Publishing, United Kingdom, 2019, p. 124-149, 199-222.

<sup>6</sup> Independent International Fact-Finding Mission on Myanmar, Detailed Findings of the Independent International Fact-Finding Mission on Myanmar, UN Doc. A/HRC/42/CRP.5 (2019), para. 423; Independent International Fact-Finding Mission on Myanmar, Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar, UN Doc. A/HRC/39/CRP.2 (2018), para. 52.

several ethnic armed organizations, including the Arakan Army itself, have urged that the government declare a ceasefire to enable all groups to focus on combatting COVID-19.<sup>7</sup> On 9 April, the UN Special Rapporteur on Myanmar called for “an immediate and total ceasefire.”<sup>8</sup>

The Myanmar Government has so far failed to heed these appeals.<sup>9</sup> On 23 March, the Anti-Terrorism Central Committee designated the Arakan Army a “terrorist” group.<sup>10</sup> On 26 March, the Minister of Transport and Communications stated in a media interview that despite the COVID-19 pandemic, there was no plan to lift the months-long Internet shutdown until hate speech, misinformation and the conflict with the Arakan Army were addressed.<sup>11</sup> As of this writing, the Internet shutdown in these areas remains. Ongoing fighting continues to claim the lives of many people. On 21 April, a WHO employee was killed, and another colleague was injured, when their vehicle came under fire in Rakhine state. At the time, they were transporting COVID-19 test samples in a vehicle bearing the UN logo.<sup>12</sup> Both Myanmar’s Army and the Arakan Army denied responsibility and blamed each other for the attack.<sup>13</sup>

The Internet shutdown and the attack on health workers undermine the enjoyment of the right to health by limiting access to information and essential care to vulnerable populations affected by conflict. The following Q & A will set out the relevant international human rights law, and apply them to both cases to illustrate the disproportionate health impact that such acts – which would constitute human rights violations in any context – have on communities in areas of conflict.

## 1. What does the right to health guarantee?

The right to health primarily guarantees access to healthcare. Healthcare encompasses access to health facilities, goods and services. Beyond this, the right to health also guarantees access to basic

<sup>7</sup> Delegation of the European Union to Myanmar, “Statement from Ambassadors to Myanmar,” 1 April 2020, [https://eeas.europa.eu/delegations/myanmar-burma/76872/statement-ambassadors-myanmar\\_en](https://eeas.europa.eu/delegations/myanmar-burma/76872/statement-ambassadors-myanmar_en) (Accessed 21 April 2020); See, e.g., Karen National Union, “KNU Statement concerning the COVID-19 Pandemic,” 26 March 2020, <https://www.facebook.com/knuheadquartersofficial/photos/a.2192547437694360/2626795054269594/?type=3&theater> (Accessed 22 April 2020); Myanmar Times, “Three ethnic armed groups declare truce,” 3 April 2020; Progressive Voice, “Coronavirus Must Not be a Cover for Human Rights Abuses,” 3 April 2020; Reuters, “Driver killed in WHO vehicle carrying virus swabs in Myanmar’s Rakhine,” 21 April 2020.

<sup>8</sup> Yanghee Lee, Special Rapporteur on the situation of human rights in Myanmar, “Myanmar must allow free flow of information and aid to protect right to health in COVID-19 crisis,” 9 April 2020 <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25783&LangID=E> (Accessed 22 April 2020). Armed confrontations between the Myanmar military and the Arakan Army began in late 2018 and have intensified throughout 2019 until the present, leading to civilian casualties, arrests and prosecutions under Myanmar’s Counter-Terrorism Law and the imposition of a months-long Internet shutdown in nine townships in Rakhine and Chin states.

<sup>9</sup> Myanmar Times, “Tatmadaw rejects call for ceasefire during pandemic,” 2 April 2020.

<sup>10</sup> Anti-Terrorism Central Committee, Order No. 1/2020, Declaration of Terrorist Group, 23 March 2020, <https://www.globalnewlightofmyanmar.com/declaration-of-terrorist-group/> (Accessed 23 March 2020); The 2014 Counter-terrorism Law does *not* limit the applicability of its criminal provisions to organizations designated as a “terrorist group” by the Anti-Terrorism Central Committee. Under Section 3(v), a “terrorist group” means “a group of two or more persons formed taking a period of time to commit an act of terrorism. In this expression, a group of terrorist [sic] declared under the resolution of United Nations Security Council or by the [Anti-Terrorism Central Committee] is also included.” However, the designation would facilitate the prosecution as a practical evidentiary matter. For instance, Section 2(d) penalizes “financing [amounting] to abetment of any terrorist or any terrorist group who commits or is likely to commit an act of terrorism.”

<sup>11</sup> 7Day TV, <https://www.facebook.com/1018416014896767/posts/3654408471297495/?vh=e&d=n> (Accessed 1 April 2020); The Ministry of Transport and Communications (MoTC) first ordered Internet restrictions on 21 June 2019 in Rakhine state’s Buthidaung, Kyauktaw, Maungdaw, Minbya, Mrauk-U, Myebon, Ponnagyun, and Rathedaung townships and Chin state’s Paletwa township. The MoTC lifted the restriction in Buthidaung, Maungdaw, Myebon, Paletwa, and Rathedaung townships on 1 September 2019 but reinstated it again on 3 February 2020. See Joint Statement, “Myanmar: Lift Internet Restrictions in Rakhine and Chin States,” 13 February 2020, <https://www.hrw.org/news/2020/02/13/myanmar-lift-internet-restrictions-rakhine-and-chin-states> (Accessed 27 April 2020)

<sup>12</sup> Chin Human Rights Organization, “3 Civilians Die in Cross-Fire as Heavy Artillery Hits Paletwa Town Amidst On-going Fighting,” 22 April 2020; Myanmar Times, “People in Myanmar conflict zones worry little about COVID-19,” 18 April 2020; Radio Free Asia, “Eight Civilians Die in Myanmar Military Battle with Arakan Army in Chin, Rakhine,” 24 April 2020; Reuters, “Driver killed in WHO vehicle carrying virus swabs in Myanmar’s Rakhine,” 21 April 2020; Frontier Myanmar, “After WHO driver’s death, fear and foreboding haunt Rakhine’s COVID-19 response,” 27 April 2020.

<sup>13</sup> BBC, “Coronavirus: WHO worker killed in Myanmar collecting samples,” 21 April 2020; Radio Free Asia, “Death of WHO Driver Sparks Calls for Cease-fire in Myanmar’s Rakhine State,” 21 April 2020.

shelter, housing and sanitation, and an adequate supply of safe and potable water as these factors impact one's health.<sup>14</sup>

## 2. Who does the right to health protect?

As with other human rights, the right to health must be guaranteed to all persons. This is affirmed in Article 2 of the ICESCR, which contains the bedrock principle of non-discrimination, an obligation of immediate effect. Article 2 requires States to prohibit discrimination on the grounds of race, color, sex, language, nationality, religion, political or other opinion, national or social origin, property, birth, disability, age, marital and family status, sexual orientation and gender identity, health status, place of residence and economic and social situation, and other status.<sup>15</sup> This means that access to healthcare as well as health resource allocation should not be made to depend on any of these grounds; the right to health must be protected equally. However, section 367 of Myanmar's Constitution fails to comply with this obligation, as it reserves the "right to healthcare" to citizens.<sup>16</sup>

## 3. What are Myanmar's obligations regarding the right to health?

Myanmar became a State Party to the ICESCR in 2017.<sup>17</sup> It has been a party to the CRC since 1991. The obligations arising from these treaties apply both in peacetime as well as during an armed conflict. Article 12 of the ICESCR safeguards the "right of everyone to the enjoyment of the highest attainable standard of physical and mental health." Article 24 of the CRC provides for particular guarantees in respect of the rights of the health of children.

The right to health, like other human rights, is fully applicable in armed conflict situations.<sup>18</sup> While the full realization of the right to health may be achieved progressively within the maximum of Myanmar's available resources, many aspects of this right are of immediate effect.<sup>19</sup> This means that States must ensure them immediately. These "core obligations" of immediate effect are the following:

- (a) To ensure the right to access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups;
- (b) To ensure access to the minimum essential food which is nutritionally adequate and safe, to ensure freedom from hunger to everyone;
- (c) To ensure access to basic shelter, housing and sanitation, and an adequate supply of safe and potable water
- (d) To provide essential drugs, as from time to time defined under the WHO Action Programme on Essential Drugs;
- (e) To ensure equitable distribution of all health facilities, goods and services; and
- (f) To adopt and implement a national public health strategy and plan of action, on the basis of epidemiological evidence, addressing the health concerns of the whole population.<sup>20</sup>

<sup>14</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 14, The Right to the Highest Attainable Standard of Health (Art. 12), UN Doc. E/C.12/2000/4 (2000), para. 4.

<sup>15</sup> ICESCR, article 2(2); Committee on Economic, Social and Cultural Rights, General Comment No. 20, Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), UN Doc. E/C.12/GC/20 (2009).

<sup>16</sup> See Vienna Convention on the Law of Treaties (1969), article 27 (stating the general rule that a party to a treaty cannot invoke the provisions of internal law as justification for its failure to perform a treaty).

<sup>17</sup> UN Treaty Body Database – Myanmar,

[https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=119&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=119&Lang=EN) (Accessed 22 April 2020)

<sup>18</sup> ICESCR, article 12(c) and (d); Committee on Economic, Social and Cultural Rights, General Comment No. 14 The Right to the Highest Attainable Standard of Health (Art. 12), UN Doc. E/C.12/2000/4 (2000), para.10 and 12(b).

<sup>19</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 14 The Right to the Highest Attainable Standard of Health (Art. 12), UN Doc. E/C.12/2000/4 (2000), para. 30-31; International Commission of Jurists, "Adjudicating Economic, Social and Cultural Rights at National Level: A Practitioners Guide," (2014), p. 36-40.

<sup>20</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 14 The Right to the Highest Attainable Standard of Health (Art. 12), UN Doc. E/C.12/2000/4 (2000), para. 43, 29; See, generally, International Commission of Jurists, "Adjudicating Economic, Social and Cultural Rights at National Level: A Practitioners Guide," (2014); Article 5 of the ICESCR allows limitations to the right to health under narrow circumstances. Any such limitation must be provided by law, compatible with the nature of these rights under the ICESCR and solely for the purpose of promoting the general welfare in a democratic society. Any limitations of rights must be necessary and proportional and "the least restrictive alternative must be adopted where several types of limitations are available." Importantly, the public health grounds cited as basis to justify the rights restrictions must be of limited duration and subject to review by ordinary civilian courts.

Healthcare must be available, accessible, acceptable and of an adequate quality.<sup>21</sup>

State measures to combat public health emergencies such as COVID-19 must be understood as measures to comply with their obligations to ensure the right to health.<sup>22</sup> This means that Myanmar must actively consider the standards under the right to health, including the obligation of non-discrimination and equal protection, in the development of its policy and practical responses to COVID-19. The Committee on Economic, Social and Cultural Rights (CESCR), the supervisory body that provides authoritative interpretations of the ICESCR's provisions, urges States to combat COVID-19 using a human rights framework.<sup>23</sup>

#### 4. How is access to information important to upholding the right to health?

The right to freedom of expression and to seek, receive and impart information are protected under international human rights law. They must not only be guaranteed in their own right, but also in order for people to be able to enjoy the right to health. Access to healthcare under the ICESCR requires: physical,<sup>24</sup> economic<sup>25</sup> and, importantly for the present purposes, *information accessibility* without discrimination. Information accessibility obliges States to ensure access to health-related education and information, and that everyone can seek, receive and share information and ideas concerning health issues.<sup>26</sup> It includes a duty to promote and facilitate access to healthcare through the provision of information about the right to health and health-related information. It also includes abstaining from the enforcement of discriminatory practices as a State policy as well as from "censoring, withholding or intentionally misrepresenting health-related information" and "preventing people's participation in health-related matters."<sup>27</sup>

In the context of COVID-19, the CESCR recommends that information about the pandemic must be provided by the State on a "regular basis, in an accessible format and in all local and indigenous languages." This is because "accurate and accessible information" is crucial to "reduce the risk of transmission of the virus" and fight COVID-19-related disinformation. Affordable Internet services and the necessary technology must also be made available so that students can continue with their education through online learning programs.<sup>28</sup>

#### 5. Do these human rights obligations and protections apply in situations of armed conflict?

Yes. Both international human rights law and international humanitarian law (i.e., the law of armed conflict) apply to situations of armed conflict. This means that Myanmar must fully comply with its obligations under the CESCR and CRC, even in conflict zones. In addition, international humanitarian law provides further protections relating to the right to health (See Question 7).

<sup>21</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 14 The Right to the Highest Attainable Standard of Health (Art. 12), UN Doc. E/C.12/2000/4 (2000), para. 12.

<sup>22</sup> Tim Fish Hodgson and Ian Seiderman, "COVID-19 Symposium: COVID-19 responses and State Obligations Concerning the Right to Health (Part 1)," *Opinio Juris*, <http://opiniojuris.org/2020/04/01/covid-19-symposium-covid-19-responses-and-state-obligations-concerning-the-right-to-health-part-1/> (Accessed 27 April 2020); Tim Fish Hodgson and Ian Seiderman, "COVID-19 Symposium: COVID-19 responses and State Obligations Concerning the Right to Health (Part 2)," *Opinio Juris*, <http://opiniojuris.org/2020/04/01/covid-19-symposium-covid-19-responses-and-state-obligations-concerning-the-right-to-health-part-2/> (Accessed 27 April 2020)

<sup>23</sup> Committee on Economic, Social and Cultural Rights, Statement on the coronavirus (COVID-19) pandemic and economic, social and cultural rights, UN Doc. E/C.12/2020/1 (2020), para. 2.

<sup>24</sup> *Physical accessibility* requires States to take steps to prevent, treat and control epidemic, endemic, occupational and other diseases as well as create conditions "which would assure to all medical service and medical attention in the event of sickness. Committee on Economic, Social and Cultural Rights, General Comment No. 14 The Right to the Highest Attainable Standard of Health (Art. 12), UN Doc. E/C.12/2000/4 (2000), para. 12(b).

<sup>25</sup> *Economic accessibility* requires that the poorest groups are not "disproportionately burdened with health expenses" compared to more affluent members of society. Committee on Economic, Social and Cultural Rights, General Comment No. 14 The Right to the Highest Attainable Standard of Health (Art. 12), UN Doc. E/C.12/2000/4 (2000), para. 12(b).

<sup>26</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 14 The Right to the Highest Attainable Standard of Health (Art. 12), UN Doc. E/C.12/2000/4 (2000), para. 12(b).

<sup>27</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 14 The Right to the Highest Attainable Standard of Health (Art. 12), UN Doc. E/C.12/2000/4 (2000), para. 33-34.

<sup>28</sup> Committee on Economic, Social and Cultural Rights, Statement on the coronavirus (COVID-19) pandemic and economic, social and cultural rights, UN Doc. E/C.12/2020/1 (2020), para. 18.

## 6. How does the Internet shutdown in Rakhine and Chin states affect Myanmar's obligation to uphold the right to health?

In March 2020, the Minister of Transport and Communications stated that COVID-19 would have no impact on the Internet shutdown, which would remain in place indefinitely. This was followed by a further order to take down hundreds of websites, including ethnic media outlets upon which the communities in those areas heavily rely for health and other information.<sup>29</sup>

The Internet shutdown in Rakhine and Chin states raises freedom of expression concerns, as previously pointed out by the ICJ and others.<sup>30</sup> These measures also risk a potential breach by Myanmar of its treaty obligations on the right to health as well as its international humanitarian law obligations by limiting information accessibility, particularly the sharing and receiving of information concerning health issues. Lifting the Internet shutdown is essential in order for Myanmar to fully discharge its obligations under the ICESCR. This is fundamentally important in the context of COVID-19, especially when it is understood that all COVID-19 responses are measures that States are obliged to take in terms of their duties to respect, protect and fulfill the right to health of all people without discrimination.

The Internet shutdown defies the recommendations of the CESCR in the specific context of COVID-19. Instead of opening up lines of communication and information-sharing, the Internet ban serves to generally deny communities of affected townships the access to critical information necessary to prevent infection, including any "health education activities" on COVID-19 that the Department of Health may implement.<sup>31</sup> It has also hindered humanitarian access by preventing humanitarian agencies from being able to make assessments effectively to inform their responses, or to effectively share information about the humanitarian and human rights situation. It disrupts communications and coordination efforts among humanitarian and health workers, and has adverse impacts on the effective distribution of medical goods, food, potable water and sanitation as well as the operation of medical facilities in these areas. The cumulative effects of the Internet shutdown in the context of the COVID-19 outbreak severely undermine the enjoyment of the right to health of Myanmar's inhabitants.

## 7. What are the legal implications of attacks against medical personnel in areas of armed conflict?

International human rights law protects the right to life of all persons. International humanitarian law complements this by providing protections for persons in times of armed conflict and by regulating the means and methods of warfare. Myanmar is a party to the four 1949 Geneva Conventions.<sup>32</sup> While it is not a party to other primary IHL treaties, such as Additional Protocols I and II of 1977, many of the rules contained in those instruments remain applicable to Myanmar as they have become part of customary international law.<sup>33</sup>

Article 3 common to the four Geneva Conventions applies to non-international armed conflicts and is relevant to the present context.<sup>34</sup> Under Article 3(2), all parties to the various armed conflicts in Myanmar, and not just the State, have the obligation to collect and care for the wounded and sick without distinction. This calls for a non-discriminatory approach in terms of enabling access to medical treatment and health information, including unimpeded access to the Internet. For this

<sup>29</sup> See International Commission of Jurists, "Government must lift online restrictions in conflict-affected areas to ensure access to information during COVID-19 pandemic," 10 April 2020.

<sup>30</sup> International Commission of Jurists, "Myanmar: Government must lift online restrictions in conflict-affected areas to ensure access to information during COVID-19 pandemic," 10 April 2020; ARTICLE 19, "Briefing Paper: Myanmar's Internet Shutdown in Rakhine and Chin States," 2 August 2019; Progressive Voice, "Coronavirus Must Not be a Cover for Human Rights Abuses," 3 April 2020.

<sup>31</sup> The Law Amending the Prevention and Control of Communicable Diseases Law, The State Peace and Development Council Law No. 16-2011 (2011), section 3(c); The Prevention and Control of Communicable Diseases Law, The State Law and Order Restoration Council Law No. 1/95 (1995).

<sup>32</sup> Geneva Convention I on Wounded and Sick in Armed Forces in the Field (1949); Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (1949); Geneva Convention Relative to the Treatment of Prisoners of War (1949); Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1949).

<sup>33</sup> See ICRC Study on Customary International Humanitarian Law, <https://casebook.icrc.org/law/non-international-armed-conflict> (Accessed 27 April 2020)

<sup>34</sup> Except for Article 3, the four Geneva Conventions only apply to international armed conflicts (between at least two States) and therefore do not directly apply to the conflict between the military and the Arakan Army. Nevertheless, many of the rules contained in these conventions have become customary norms applicable to non-international armed conflicts. See ICRC Study on Customary International Humanitarian Law, <https://casebook.icrc.org/law/non-international-armed-conflict> (Accessed 27 April 2020)



purpose, both sides “should endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.” In this regard, observing a ceasefire would be a means of giving effect to Myanmar’s international humanitarian law obligations.

As part of protecting the wounded and sick, both parties to the conflict must also ensure the safe passage of medical vehicles and the continued operation of medical facilities (e.g. makeshift hospitals).<sup>35</sup> For this purpose, medical transport bearing the UN logo acquire particular significance in the context of an armed conflict.<sup>36</sup> The logo signals to the parties to the conflict that such a vehicle must not be attacked. Medical personnel must be protected from physical risk and from the threat of prosecution based on treating persons without distinction as to political opinion or ethnicity.<sup>37</sup> There are also many rules under IHL concerning the conduct of hostilities, applicable to all parties to a conflict, that have implications for protecting the right to health. For instance, direct or indiscriminate attacks against civilian objects such as hospitals and medical facilities are absolutely forbidden and constitute a war crime.<sup>38</sup> Starvation is prohibited as a means of warfare.<sup>39</sup>

Viewed in this light, the recent attack on the vehicle bearing the UN logo and transporting COVID-19 test samples in Rakhine State is illegal under international law. The attack not only constitutes a clear breach of international humanitarian law; it also impairs the right to health of immediate communities as well as the broader population who equally remain exposed to the virus. The continued conduct of hostilities in light of the pandemic risks the safety of civilians, the wounded and sick needing medical attention and the medical personnel tending to them. As the death of the WHO employee gravely illustrates, the continuation of hostilities exposes medical buildings and vehicles to attack, which would undermine overall efforts to contain the COVID-19 outbreak. It also hampers “international assistance and cooperation” that Myanmar undertakes under Article 2(1) of the ICESCR to fully realize the right to health of all persons in the country.

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<sup>35</sup> Rules 28-29, ICRC Study on Customary International Humanitarian Law, <https://ihl-databases.icrc.org/customary-ihl/eng/docs/home?opendocument> (Accessed 30 April 2020)

<sup>36</sup> Rule 30, ICRC Study on Customary International Humanitarian Law, [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule30](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule30) (Accessed 30 April 2020)

<sup>37</sup> Rules 25, 26, 30, ICRC Study on Customary International Humanitarian Law, <https://ihl-databases.icrc.org/customary-ihl/eng/docs/home?opendocument> (Accessed 30 April 2020)

<sup>38</sup> Rules 25, 26, 28, 29, 30, ICRC Study on Customary International Humanitarian Law, <https://ihl-databases.icrc.org/customary-ihl/eng/docs/home?opendocument> (Accessed 30 April 2020); See Jean-Marie Henckaerts and Louise Doswald-Beck, eds., *International Committee of the Red Cross Customary International Humanitarian Law Volume I: Rules*, Cambridge University Press, United Kingdom, 2005, p. 79-90, 91-104.

<sup>39</sup> Rule 53, ICRC Study on Customary International Humanitarian Law, [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule53](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule53) (Accessed 30 April 2020)