Medical Neutrality and the Right to Health

Effective protections for health care workers under international human rights law

Medical neutrality requires: 1. the protection of medical personnel, patients, facilities, and transport from attack or interference; 2. unhindered access to medical care and treatment; and 3. nondiscriminatory treatment of the sick and injured.1

The principles of medical neutrality and medical ethics remain unchanged during times of conflict, civil unrest, or state emergencies.

Under international human rights law, states are obligated to ensure effective protection for health care workers at all times, and to provide unencumbered access to emergency health care for all. These obligations remain in force regardless of any context of conflict, civil unrest, emergency, or alleged criminal activity. Interference by a third party, including punishment or harassment of health care professionals for providing medical treatment in accordance with international medical ethics, is prohibited by international law. This is also known as the principle of medical neutrality. Where medical neutrality is undermined or attacked, international law requires authorities to investigate.

Although the principles of medical neutrality are often discussed in the context of the Geneva Conventions and the laws of war, protection of medical neutrality is also a state obligation during peacetime and situations of violence not rising to the level of an armed conflict. In situations of violence other than armed conflict, international human rights law applies and provides the foundation for the protection of health care, and those who provide it, at all times through the provisions on the right to life, health, and freedom from torture and other cruel, inhuman, and degrading treatment. International law also requires health care to be provided without any form of discrimination, including political opinion and alleged criminal activity.

Where health professional provide care in government facilities, they are the implementing agents of state human rights obligations. However, health care professionals have a separate ethical responsibility to prevent illness and care for the sick and injured wherever they are, without regard to politics, race, or religion. International medical ethics is the normative framework under which all health care professionals are obligated to operate. Attacks on health care professionals, both legal and physical, prevent them from providing unbiased care to those in need.

Medical Ethics

The international code of medical ethics, first adopted by the World Medical Association (WMA) General Assembly in 1949, states, among other obligations, that a “physician shall give emergency care as a humanitarian duty unless he/she is assured that others are willing and able to give such care,” and “always bear in mind the obligation to respect human life.”2 The WMA clarified in its regulations on medical ethics in times of conflict that these obligations remain identical during such times. It further

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notes that if physicians, in “performing their professional duty ... have conflicting loyalties, their primary obligation is to their patients; in all their professional activities, physicians should adhere to international conventions on human rights, international humanitarian law and WMA declarations on medical ethics,”3 and that physicians are “required to render immediate attention to the best of their ability. Whether civilian or combatant, the sick and wounded must receive promptly the care they need. No distinction shall be made between patients except those based upon clinical need.”4

Medical ethics were confirmed as a normative framework that medical professionals and states alike must respect by the UN General Assembly in its Principles of Medical Ethics, adopted in 1982.5 UN General Assembly resolution 37/194 of 1982 states that it is a violation of international law for medical personnel to engage “actively or passively in acts which constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment.”6

Under the WMA Regulations in Times of Armed Conflict, parties to an armed conflict should not prosecute medical professionals for complying with any of their obligations with regard to medical ethics. Similarly, Resolution 37/194 provides that this rule applies regardless of the person benefiting from those medical activities.

Governments should protect health professionals’ independence and impartiality in treating the sick and injured. Drawing on the Declaration of Geneva, the WMA formulated a more detailed code of ethics, which states: “A physician shall be dedicated to providing competent medical services in full technical and moral independence, with compassion and respect for human dignity.”7

The Rights to Life, Health, and Freedom from Torture

Major international human rights instruments, such as the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social, and Cultural Rights (ICESCR), and the Convention against Torture (CAT), provide a concrete foundation upon which the norms of medical neutrality stand. The ICCPR forbids arbitrary arrest and detention and describes very limited situations in which deviation from this principle is allowed. The arbitrary arrest and detention of medical personnel violates this international treaty. The ICCPR also protects the right to life as a non-derogable right, that is, a right that cannot be limited with reference to emergencies or conflict.

Additionally, the CAT forbids governments from engaging in torture and acts of cruel, inhuman, and degrading treatment. Subjecting patients or those in need of medical services to torture or cruel, inhuman, and degrading treatment stands in clear violation of the CAT.8

All human rights must be fulfilled without discrimination. Under IHRL, the obligation of States to ensure individuals’ right of access to health-care facilities, goods and services on a non-discriminatory basis also means that States must take positive measures to enable individuals to enjoy their right to health. It also requires States to take appropriate measures to prevent third persons from interfering with medical treatment given to the wounded and sick.

4 ibid
5 UN General Assembly, Principles of Medical Ethics Relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 37/194, 18 December 1982, http://www.ohchr.org/EN/ProfessionalInterest/Pages/MedicalEthics.aspx.
6 Principle 2, UN General Assembly Resolution 37/194.
7 See WMA International Code of Medical Ethics. See also Art. 5 of the WMA Declaration of Tokyo, which states: “A physician must have complete clinical independence in deciding upon the care of a person for whom he or she is medically responsible. The physician’s fundamental role is to alleviate the distress of his or her fellow human beings, and no motive, whether personal, collective or political, shall prevail against this higher purpose.”
8 PHR, Introduction to Medical Neutrality.
The ICESCR codifies the right to health in its Article 12, and says that states are obligated to provide the “highest attainable standard of physical and mental health” by providing a system ensuring to all “medical service and medical attention in the event of sickness.”\(^9\) The U.N. Committee on Economic, Social and Cultural Rights has clarified that this right “includes the creation of a system of urgent medical care in cases of accidents ... and the provision of disaster relief and humanitarian assistance in emergency situations.”\(^9\) Similarly, the Committee has noted that state obligations to implement the Covenant means that any state “in which any significant number of individuals is deprived of ... essential primary health care... is, \emph{prima facie}, failing to discharge its obligations under the Covenant,”\(^11\) and that states must refrain from “limiting access to health services as a punitive measure.”\(^12\)

The fulfillment of the right to health also requires States to abstain from arbitrarily denying or limiting such access to the wounded and sick, for instance as a punitive measure against prisoners and detainees, or political opponents.\(^13\) Placing restrictions on the treatment of persons believed to be opposed to a government constitutes arbitrary limitation on the access to health care.\(^14\)

Legal proceedings, both criminal and administrative, that seek to punish medical personnel for carrying out medical activities are in direct violation of the state’s obligation to protect medical personnel as they perform their duties. Arresting medical personnel for assisting the sick and wounded may amount to a violation of the protection against arbitrary arrest and detention, even if it is done lawfully under domestic legislation. The UN Human Rights Committee has stated that inappropriate or unjust implementation of the law can amount to arbitrariness.\(^16\)

Health care personnel have precise ethical duties to observe, such as treating patients in a non-discriminatory manner or acting in the best interests of the patient when providing health care. International human rights law imposes the non-derogable obligation on states to respect the right of the wounded and sick to have non-discriminatory access to health-care facilities and medical goods and services; this obligation requires states to refrain from interfering, directly or indirectly, with the enjoyment of that right.\(^17\)

\(^9\) ICESCR, Article 12 (1) and 12(2)(d).
\(^12\) ICESCR, “General Comment 14,” para. 34.
\(^13\) See International Committee of the Red Cross, Domestic Normative Frameworks for the Protection of Health Care, May 2015, p. 20, citation: CESC, General Comment No. 14, paras 34, 43, 47 and 50. 49 Ibid, para. 28.
\(^14\) CESC, “General Comment 14,” paras 34, 43, 47 and 50.
\(^15\) CESC, “General Comment 14,” para. 34.
\(^16\) Human Rights Committee, General Comment 35 on Article 9: Liberty and Security of a Person, para. 12 “An arrest or detention may be authorized by domestic law and nonetheless be arbitrary. The notion of “arbitrariness” is not to be equated with “against the law,” but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality.”
\(^17\) ICESCR, General Comment No. 14, paras 33 and 43.