



AL-HAQ



Legal Briefing Paper

COVID-19 and the Right to Health of Palestinians under Israeli Occupation, Colonisation, and Apartheid



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1. INTRODUCTION

Around the world, COVID-19 has exacerbated situations of injustice, structural racism, and institutionalised oppression.¹ For the Palestinian people, the COVID-19 pandemic has highlighted deep-rooted structural inequities that detrimentally impact enjoyment of their right to the highest attainable standard of physical and mental health, including the underlying determinants of good health and well-being.² Decades of ongoing Israeli settler-colonialism³ and apartheid⁴ have meant the continued denial of Palestinians' individual and collective rights, including to self-determination and return to their homes, lands, and properties.

COVID-19 has also brought to the forefront the ongoing settler-colonial erasure of Palestinians, through the removal of Palestine from dashboards tracking the spread of COVID-19,⁵ and the silencing of Palestinian voices, narratives, and experiences, including for challenging the root causes of structural violence impacting Palestinians during the pandemic.⁶ It seems that

1 Al-Haq, 'Israeli Apartheid Undermines Palestinian Right to Health Amidst COVID-19 Pandemic,' 7 April 2020, available at: <<http://www.alhaq.org/advocacy/16692.html>>.

2 Yara Hawari, 'In Palestine, COVID-19 Meets the Israeli Occupation,' *Al-Shabaka*, 14 April 2020, available at: <<https://al-shabaka.org/memos/in-palestine-covid-19-meets-the-occupation/>>.

3 Osama Tanous, 'A New Episode of Erasure in the Settler Colony,' *Critical Times*, 9 April 2020, available at: <<https://ctjournal.org/2020/04/09/a-new-episode-of-erasure-in-the-settler-colony/>>.

4 Al-Haq, 'Palestinian, regional, and international groups submit report on Israeli apartheid to UN Committee on the Elimination of Racial Discrimination,' 12 November 2019, available at: <<http://www.alhaq.org/advocacy/16183.html>>.

5 See, e.g., Rania Muhareb, Rita Giacaman, 'Tracking COVID-19 responsibly,' *The Lancet*, 27 March 2020, available at: <[https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)30693-0/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)30693-0/fulltext)>.

6 See, e.g., Bram Wispelwey, Rania Muhareb, Mads Gilbert, 'Permission to Narrate a Pandemic in Palestine,' *XXVII Middle East Policy* 2, 2 September 2020, available at: <<https://doi.org/10.1111/mepo.12502>>.

the Palestinian people's positionality⁷ in public and academic discourse has not changed much since Edward Said's 1984 observation that 'Paradoxically, never has so much been written and shown of the Palestinians,' and yet 'the narrative of their present actuality... that narrative is not.'⁸

As of the time of writing, Palestinians continue to face a sharp increase in COVID-19 infections. The World Health Organization (WHO) has warned of a health system collapse in the besieged Gaza Strip, where community transmission began in August 2020.⁹ Meanwhile, the West Bank has entered a 48-hour lockdown and 14-day curfew as COVID-19 cases continue to spiral.¹⁰ As of 30 November 2020, WHO has recorded 62,195,274 confirmed cases of COVID-19 worldwide, including 1,453,355 associated deaths.¹¹ For Palestinians, even tracking the spread of COVID-19 amidst Israeli policies of fragmentation and apartheid has been a daunting task.¹² In the occupied Palestinian territory, as of 30 November 2020, WHO has recorded 98,850 confirmed COVID-19 cases, including 822 deaths, comprising 78,204

7 According to the University of British Columbia's Centre for Teaching, Learning and Technology's Indigenous Initiatives, "Positionality refers to the how differences in social position and power shape identities and access in society." See UBC, 'Positionality & Intersectionality,' accessed 2 December 2020, available at: <<https://indigenousteaching.ctl.ubc.ca/classroom-climate/positionality-and-intersectionality/>>.

8 Edward Said, 'Permission to narrate,' 6 *London Review of Books* 3, 16 February 1984, available at: <<https://www.lrb.co.uk/the-paper/v06/n03/edward-said/permission-to-narrate>>.

9 Middle East Monitor, 'WHO warns of collapse of health system in Gaza due to coronavirus,' 24 November 2020, available at: <<https://www.middleeastmonitor.com/20201124-who-warns-of-collapse-of-health-system-in-gaza-due-to-coronavirus/>>.

10 Al Jazeera, 'Occupied West Bank enters lockdown amid coronavirus surge,' 27 November 2020, available at: <<https://www.aljazeera.com/news/2020/11/27/occupied-west-bank-enters-lockdown-amid-coronavirus-surge>>.

11 WHO, WHO Coronavirus Disease (COVID-19) Dashboard, as of 10:23 am CET on 30 November 2020, available at: <<https://covid19.who.int/>>.

12 Inconsistencies and disparities in tracking COVID-19 in Palestine have been highlighted as a result of Israel's annexationist and settler-colonial policies. These, reproduced by academic institutions and journals, tend to omit mention of the bias of the coloniser's narrative. See Rania Muhareb, Rita Giacaman, 'Tracking COVID-19 responsibly,' *The Lancet*, 27 March 2020, available at: <[https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)30693-0/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)30693-0/fulltext)>.

infections in the West Bank, including 720 associated deaths, and 20,646 COVID-19 cases in the Gaza Strip, with 102 associated deaths.¹³ Tracking COVID-19 infections in occupied East Jerusalem¹⁴ and in Palestinian communities within the Green Line has been more difficult due to a lack of reliable disaggregated data.

13 WHO, Coronavirus Disease (COVID-19) in the occupied Palestinian territory dashboard, as of 15:00 (GMT+2) on 30 November 2020, accessible from: <<http://www.emro.who.int/countries/pse/index.html>>.

14 In the absence of disaggregated COVID-19 data for East Jerusalem by the Israeli occupying authorities and the Palestinian Health Ministry's inability to access patient files in Jerusalem due to the reality of Israel's illegal annexation of the city, accurate figures on COVID-19 infections amongst Palestinians in Jerusalem have been difficult to obtain. See Al-Haq, JLAC, Medical Aid for Palestinians, *COVID-19 and the Systematic Neglect of Palestinians in East Jerusalem*, Joint Briefing Paper, July 2020, pp. 7-8, available at: <<http://www.alhaq.org/publications/17118.html>>.

2. IMPACT OF PROLONGED HUMAN RIGHTS ABUSES ON DETERMINANTS OF PALESTINIAN HEALTH

In responding to the global pandemic, the UN High Commissioner for Human Rights stressed that ‘efforts to combat this virus won’t work unless we approach it holistically, which means taking great care to protect the most vulnerable and neglected people in society, both medically and economically.’¹⁵ Fulfilment of the human right to health requires a broad approach to justice in society since it relies upon respect for the political, social, and other determinants of health. As recognised by the UN Committee on Economic, Social and Cultural Rights (CESCR), the right to health ‘embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment.’¹⁶ The Palestinian experience of ‘normality’ has been one of permanent emergency,¹⁷ prolonged, widespread, and systematic human rights abuses, and institutionalised violations of the laws of war. Against this backdrop, COVID-19 poses a disproportionate and substantial threat to a Palestinian society deliberately denied for decades the right to develop a functioning healthcare system, as a result of apartheid policies and practices imposed by Israel’s prolonged occupation.

15 OHCHR, ‘Coronavirus: Human rights need to be front and centre in response, says Bachelet,’ 6 March 2020, <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25668&LangID=E>>.

16 CESCR, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Article 12), 11 August 2000, UN Doc. E/C.12/2000/4, para. 4.

17 OCHA, “Palestinians stuck in a perpetual cycle of humanitarian relief” – UN Humanitarian Chief, 23 November 2016, <<https://www.unocha.org/story/palestinians-stuck-perpetual-cycle-humanitarian-relief-un-humanitarian-chief>>.

Foundations and facets of Israel's apartheid regime

For decades, the Palestinian people have been strategically fragmented into distinct legal, political, and geographic domains, as detailed in a 2017 report by the UN Economic and Social Commission for Western Asia (ESCWA). The ESCWA report highlighted the fragmentation of the Palestinian people as the main tool of Israel's apartheid regime, one that denies Palestinians the enjoyment of any collective rights, while at the same time obscuring the very existence of one single legal regime imposed over all Palestinians on both sides of the Green Line and in exile.¹⁸ In line with the analysis of the ESCWA report, Palestinians have been fragmented into the following four domains:

1. Palestinians subject to Israeli civil law within the Green Line;
2. Palestinians subject to Israeli permanent residency law in the city of Jerusalem;
3. Palestinians, including Palestinian refugees, subject to Israeli military law in the West Bank and the Gaza Strip; and
4. Palestinian refugees and exiles abroad, but whose right of return to their homes and property has systematically been denied as a matter of Israeli State policy.¹⁹

Fragmentation of the OPT, comprising the West Bank, including East Jerusalem, and the Gaza Strip, has been exacerbated since the Oslo Accords saw the West Bank further divided into Areas A, B, and C, with a 'special status' for occupied East Jerusalem and the city of Hebron (divided into areas H1 and H2). The Gaza Strip, subjected to 13 years of illegal Israeli closure and

18 ESCWA, *Israeli Practices towards the Palestinian People and the Question of Apartheid*, Palestine and the Israeli Occupation, Issue No. 1, Beirut 2017, UN Doc. E/ESCWA/ECRI/2017/1, pp. 37-38.

19 *Ibid.*

blockade, amounting to unlawful collective punishment,²⁰ faces an egregious system of severe movement and access restrictions, where some two million Palestinians are separated from the rest of their people and land in denial of their collective right to self-determination. This geographic division creates a complex system of dependency upon Israel, the Occupying Power, and its overarching military and security apparatus, which controls all movement of people and goods, as well as access to healthcare for Palestinians.

Compounded by physical closures, closed areas, zones with restricted access, bureaucratic barriers, and political oppression, geographic fragmentation means that the ability to provide and develop healthcare services for the occupied population is severely undermined, if not rendered virtually impossible.²¹ The result is that of an active Israeli de-development policy, which has disproportionately impacted Palestinian health outcomes,²² where denial of access to and sovereign control over all natural resources, including

20 *Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (adopted 12 August 1949, entry into force 21 October 1950) 75 UNTS 287, Article 33. *See also* Human Rights Council, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 15 July 2020, UN Doc. A/HRC/44/60, para. 60.

21 *See, e.g.*, Birzeit University, 'A fragmented land and Balkanized people: the impact of Israel's residency policies on Palestinian families,' 23 March 2019, available at: <<https://www.birzeit.edu/en/news/fragmented-land-and-balkanized-people-impact-israels-residency-policies-palestinian-families>>.

22 *See* CERD, Concluding observations on the combined seventeenth to nineteenth reports of Israel, 12 December 2019, UN Doc. CERD/C/ISR/CO/17-19, para. 38(c).

land,²³ water,²⁴ minerals,²⁵ natural gas and oil,²⁶ as well as solar energy,²⁷ has deliberately deprived the Palestinian people of their means of subsistence, and furthered the colonisation of the OPT. Although short-term humanitarian aid, including the delivery of health services to Palestinian communities, addresses a crucial gap in basic service delivery, it cannot alone address the root causes of Palestinian rights deprivation as a result of prolonged Israeli occupation, colonisation,²⁸ and apartheid.

23 See, e.g., Mercedes Melon, *Settling Area C: The Jordan Valley Exposed* (Al-Haq, 2018), available at: <<http://www.alhaq.org/publications/8057.html>>.

24 Elisabeth Koek, *Water for One People Only: Discriminatory Access and 'Water-Apartheid' in the OPT* (Al-Haq, 2013), available at: <<http://www.alhaq.org/publications/8073.html>>.

25 Claudia Nicoletti and Anne-Marie Hearne, *Pillage of the Dead Sea: Israel's Unlawful Exploitation of Natural Resources in the Occupied Palestinian Territory* (Al-Haq, 2015), available at: <<http://www.alhaq.org/publications/8076.html>>.

26 Susan Power, *Annexing Energy: Exploiting and Preventing the Development of Oil and Gas in the Occupied Palestinian Territory* (Al-Haq, 2015), available at: <<http://www.alhaq.org/publications/8066.html>>.

27 Crystal Yeung, *The Sun Belongs to Everyone: Israeli Demolitions and Confiscations of Solar Panel Aid Projects in Area C of the West Bank* (Al-Haq, 2018), available at: <<http://www.alhaq.org/publications/8054.html>>.

28 See Yara Hawari, 'Radical Futures: When Palestinians Imagine,' *Al-Shabaka*, 24 March 2020, available at: <<https://al-shabaka.org/commentaries/radical-futures-when-palestinians-imagine/>>.

Impact of movement and access restrictions on Palestinian healthcare

The Palestinian healthcare system in the OPT has suffered decades of deliberate neglect,²⁹ de-development,³⁰ and fragmentation,³¹ which hamper an effective COVID-19 response. Throughout the years, closures of Palestinian cities, villages, and towns, and various movement and access restrictions have become a staple of Israel's prolonged military occupation, undermining the right of Palestinians to access available healthcare and to develop their own healthcare system. Such discriminatory policies and practices include:³²

1. Restrictions on freedom of movement for Palestinian patients and their companions, resulting in denial or delay of access to healthcare, and in the most extreme cases, violations of the right to life;³³
2. The undermining of healthcare provision to Palestinians, in particular through repeated attacks on health workers and facilities, committed with impunity;³⁴
3. Discriminatory planning and zoning, particularly in occupied East

29 Al-Haq, JLAC, Medical Aid for Palestinians, *COVID-19 and the Systematic Neglect of Palestinians in East Jerusalem*, Joint Briefing Paper, July 2020, pp. 7-8, available at: <<http://www.alhaq.org/publications/17118.html>>.

30 See, e.g., UNCTAD, 'Fifty years of occupation have driven the Palestinian economy into de-development and poverty,' 12 September 2017, available at: <<https://unctad.org/news/fifty-years-occupation-have-driven-palestinian-economy-de-development-and-poverty>>.

31 WHO in the occupied Palestinian territory, *Right to Health 2018*, pp. 16, available at: <http://www.emro.who.int/images/stories/palestine/documents/who_right_to_health_2018_web-final.pdf?ua=1>.

32 Al-Haq, 'Field Report on Human Rights Violations in 2019,' 4 February 2020, available at: <<http://www.alhaq.org/monitoring-documentation/16346.html>>.

33 Al-Haq, 'Al-Haq Statement on World Health Day,' 7 April 2017, available at: <<http://www.alhaq.org/advocacy/6342.html>>.

34 See, notably, Al-Haq, 'Al-Haq Refutes Israeli Army and Media Claims on the Killing of Volunteer First Responder Sajed Mizher in Dheisheh Refugee Camp,' 8 April 2019, available at: <<http://www.alhaq.org/advocacy/6070.html>>. See also Al Mezan, Medical Aid for Palestinians, Lawyers for Palestinian Human Rights, *Chronic Impunity: Gaza's Health Sector under Repeated Attack*, 30 March 2020, available at: <<https://www.mezan.org/en/post/23694>>.

Jerusalem and in Area C of the West Bank, resulting in demolitions, including the demolition of healthcare facilities, and hampering service delivery, including by humanitarian actors;³⁵ and

4. Discriminatory control over import and export as well as trade restrictions impacting the availability of medical supplies and equipment, medicines, and medical consumables.

In its 2018 report on the right to health in Palestine, WHO warned that the health system in the OPT is fragmented and fragile and highlighted the precariousness of the situation in the Gaza Strip, where Israel's illegal closure has led to de-development of the health sector and Palestinian economy, significantly affecting the sustainability of public healthcare provision.³⁶ Israel's fragmentation results in operational, logistical, and access-related challenges for Health Cluster partners in the OPT, thereby impeding a robust COVID-19 response plan.³⁷ Primary healthcare mobile clinics service the most marginalised and vulnerable Palestinians in Area C, H2 in Hebron, and the West Bank seam zones, who lack permanent clinics and already face critical barriers in accessing basic health services.

Despite the efforts to improve access to healthcare by the Palestinian Ministry of Health, WHO, and local and international stakeholders, the ability of Palestinians to adequately respond to the COVID-19 outbreak in the OPT has been critically undermined by decades of institutionalised oppression, de-development, and fragmentation, which entrenches an apartheid regime over the Palestinian people as a whole.

35 See, e.g., DanChurchAid, 'Danish and EU funded humanitarian aid again destroyed by the Israeli military,' 23 November 2016, available at: <<https://www.danchurchaid.org/articles/danish-and-eu-funded-humanitarian-aid-again-destroyed-by-the-israeli-military>>.

36 WHO in the occupied Palestinian territory, *Right to Health 2018*, pp. 14-16, available at: <http://www.emro.who.int/images/stories/palestine/documents/who_right_to_health_2018_web-final.pdf?ua=1>.

37 WHO, Health Cluster Bulletin, March 2020, available at: <<https://www.who.int/health-cluster/countries/occupied-palestinian-territory/OPT-Health-Cluster-Bulletin-March-2020.pdf?ua=1>>.

Denying Palestinians the right to adequate water and sanitation during COVID-19

Beyond movement and access restrictions, Israeli policies and practices undermine other underlying determinants of Palestinian health. Through the continued denial of Palestinian self-determination, Israel's prolonged military occupation remains a major impediment to the full and progressive realisation of Palestinians' economic, social, and cultural rights, including to health, as Al-Haq has previously outlined.³⁸ Fulfilment of the underlying determinants of Palestinian health requires urgent structural interventions³⁹ to end political oppression and enable Palestinian access to and the full exercise of sovereignty over their land and other natural resources.

WHO has recognised that 'The conditions in which people live and work can help to create or destroy their health – lack of income, inappropriate housing, unsafe workplaces, and lack of access to health systems are some of the social determinants of health leading to inequalities within and between countries.'⁴⁰ The political and historic forces to which Palestinians have been subjected compound their susceptibility to COVID-19. For instance, WHO's first recommendation for basic protective measures to prevent the spread of the pandemic has been to 'clean your hands frequently and thoroughly'.⁴¹ Yet, on World Water Day, Al-Haq observed that 'Despite the right to water being more

38 Al-Haq, Al-Haq's Follow-Up Written Responses to the United Nations Committee on Economic, Social and Cultural Rights for Israel's Fourth Periodic Review, 8 October 2019, pp. 14, available at: <http://www.alhaq.org/cached_uploads/download/2019/10/09/al-haq-cescr-written-responses-8-october-2019-final-1570617455.pdf>. For more information and links on Al-Haq's right to health work, see Al-Haq, 'Al-Haq Welcomes Launch of World Health Organization Report on the Right to Health in the Occupied Palestinian Territory,' 8 October 2019, available at: <<http://www.alhaq.org/advocacy/15781.html>>.

39 See Paul Farmer, Bruce Nizeye, Sara Stulac, Salmaan Keshavjee, 'Structural Violence and Clinical Medicine,' 3 *PLoS Medicine* 10, 24 October 2006, available at: <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1621099/>>.

40 See WHO, Commission on Social Determinants of Health, 2006, UN Doc. WHO/EIP/EQH/01/2006, available at: <https://www.who.int/social_determinants/resources/csdh_brochure.pdf>.

41 WHO, 'Coronavirus disease (COVID-19) advice for the public,' last updated 4 June 2020, available at: <<https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public>>.

critical now than any time in recent memory, Israel, the Occupying Power, continues to restrict access to clean and safe water to millions of Palestinians across the Occupied Palestinian Territory' and recalled that Israeli 'Water-Apartheid' constitutes a systemic attack on the Palestinian people's right to adequate water and sanitation as well as a concerted assault on the broader right of Palestinians to the highest attainable standard of health, at a time of unprecedented global crisis.⁴²

Palestinians in the besieged Gaza Strip have been particularly susceptible to the pandemic, where less than four per cent of the water is fit for human use and consumption.⁴³ Palestinian Bedouin communities in the Naqab within the Green Line have been similarly affected, where 80,000 Palestinian citizens of Israel have no access to emergency medical services and 56,000 residents of villages unrecognised by Israel have no adequate access to safe, clean running water.⁴⁴ Further, Palestinian refugees residing in overcrowded refugee camps and Palestinian prisoners and detainees facing overcrowding and unsanitary detention conditions in Israeli prisons are rendered more susceptible to the pandemic and denied access to adequate water and sanitation.⁴⁵

42 Al-Haq, 'On World Water Day, Al-Haq Recalls Israeli Water-Apartheid Amidst a Global Pandemic,' 23 March 2020, available at: <<http://www.alhaq.org/advocacy/16625.html>>. See also Elisabeth Koek, *Water for One People Only: Discriminatory Access and 'Water-Apartheid' in the OPT* (Al-Haq, 2013), available at: <<http://www.alhaq.org/publications/8073.html>>.

43 Oxfam International, 'Failing Gaza: undrinkable water, no access to toilets and little hope on the horizon,' available at: <<https://www.oxfam.org/en/failing-gaza-undrinkable-water-no-access-toilets-and-little-hope-horizon>>.

44 Adalah, 'Before disaster strikes: Adalah submits urgent Israeli Supreme Court petition demanding immediate access to coronavirus testing, bolstered ambulance services in Bedouin villages,' 14 April 2020, available at: <<https://www.adalah.org/en/content/view/9948>>. See also Al-Haq, BADIL, CIHRS, HIC-HLRN, Joint Submission to the Committee on the Elimination of Racial Discrimination for the list of themes on Israel's 17th to 19th periodic review, 5 September 2019, para 21, available at: <<http://www.alhaq.org/advocacy/15010.html>>.

45 Al-Haq, 'PHROC Calls the International Community & ICRC for an Urgent Intervention to Protect Palestinian Prisoners and Detainees Amid COVID-19 Exposure Concerns,' 23 March 2020, available at: <<http://www.alhaq.org/palestinian-human-rights-organizations-council/16622.html>>.

In 2018, WHO highlighted the impact of Israel’s discriminatory policies on Palestinian health outcomes, noting that, in the Gaza Strip, ‘Ongoing blockade and successive conflicts have had a devastating impact on underlying factors that contribute to health and wellbeing, known as underlying determinants of health.’ WHO further stressed that ‘Gaza continued to suffer a “dual water crisis,” characterized by a lack or shortage of potable drinking water and unsatisfactory wastewater treatment,’ concluding that: “The risk to public health in Gaza is considerable, both in terms of poor hygiene and in terms of potential biological and chemical contamination of water for consumption or food preparation.”⁴⁶

46 WHO in the occupied Palestinian territory, *Right to Health 2018*, pp. 57, available at: <http://www.emro.who.int/images/stories/palestine/documents/who_right_to_health_2018_web-final.pdf?ua=1>.

3. ISRAEL'S OBLIGATION TO FULFIL THE RIGHT TO HEALTH OF PALESTINIANS

Where practice has been to generally approach human rights violations on an individualised, case-by-case basis, Israel's prolonged suppression of the Palestinian people's right to self-determination, including permanent sovereignty and the right of return of Palestinian refugees, requires that responsibility for the collective suffering and serious injury to health of Palestinians, as a people, be considered. This is all the more relevant as COVID-19 continues to exacerbate underlying rights abuses and situations of injustice worldwide.

The experience of Palestinians denied the ability to confront and respond to the pandemic further evidences the scope and extent of Israel's apartheid regime, and the causes and consequences of the widespread and systematic denial of Palestinians' social, political, cultural, economic, and civil rights. In contravention of the prohibition and criminalisation of apartheid as a crime against humanity,⁴⁷ Israel's institutionalised regime of systematic racial oppression and domination ensures that the right of Palestinians to the highest attainable standard of physical and mental health is systematically and deliberately violated and disregarded.

International humanitarian law applicable to the Occupied Palestinian Territory

Reflecting on the closely related provisions of Article 147 of the Fourth Geneva Convention, which outlaws as a grave breach the act of 'wilfully causing great suffering or serious injury to body or health' of protected persons, and Article 8(2)(a)(iii) of the Rome Statute of the International Criminal Court, prohibiting the act of 'wilfully causing great suffering or serious injury to body

⁴⁷ *International Convention on the Suppression and Punishment of the Crime of Apartheid* (adopted 30 November 1973, entry into force 18 July 1976) 1015 UNTS 243, Article I; *Rome Statute of the International Criminal Court* (adopted 17 July 1998, entry into force 1 July 2002) 2187 UNTS 3, Article 7(1)(j).

or health' of protected persons, Ardi Imseis notes: 'There is little doubt that the cumulative effect of Israel's prolonged military occupation... has "caused great suffering" and "serious injury to body or health" of the millions of Palestinians subject to its rule. Among other things, the Palestinians' rights to life, liberty, housing, property, food, adequate health care, and education, have all been violated without let since 1967.'⁴⁸

Article 55(1) of the Fourth Geneva Convention establishes Israel's duty, as Occupying Power, to ensure the food and medical supplies of the civilian population in the OPT to the fullest extent of the means available to it. Article 14(1) of Additional Protocol I to the Geneva Conventions, which is reflective of customary international humanitarian law, provides that the Occupying Power has the duty to ensure that the medical needs of the civilian population in occupied territory continue to be satisfied, while Article 69(1) further requires that the Occupying Power must ensure without adverse distinction the provision of clothing, bedding, means of shelter, and other supplies essential to the survival of the civilian population, as well as objects necessary for religious worship. These provisions are to be read in conjunction with Article 56 of the Fourth Geneva Convention, which provides that:

'To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring and maintaining, with the co-operation of national and local authorities, the medical and hospital establishments and services, public health and hygiene in the occupied territory, with particular reference to the adoption and application of the prophylactic and preventive measures necessary to combat the spread of contagious diseases and epidemics. Medical personnel of all categories shall be allowed to carry out their duties.'

That Israel, as Occupying Power, has failed, and is continuing to disregard

48 Ardi Imseis, 'On the Fourth Geneva Convention and the Occupied Palestinian Territory,' 44 *Harvard International Law Journal* 1, 2003, pp. 114-5.

its obligations under international humanitarian law in the context of the COVID-19 pandemic is borne out not only by the absence of any effort at adopting and applying ‘the prophylactic and preventive measures necessary to combat the spread of contagious diseases and epidemics,’ but by Israel’s discriminatory policies and practices, which actively deny Palestinians access to adequate water and sanitation.

Article 59(1) of the Fourth Geneva Convention further provides that: ‘If the whole or part of the population of an occupied territory is inadequately supplied, the Occupying Power shall agree to relief schemes on behalf of the said population, and shall facilitate them by all the means at its disposal.’ Critically, where the Occupying Power fails, or refuses, to meet this legal obligation towards the protected population of the occupied territory, it must agree to relief actions. As emphasised by the International Committee of the Red Cross (ICRC), ‘In occupied territory, the Occupying Power does not have the option to refuse’ to allow an organisation or a third State to enter its territory to provide humanitarian assistance to the civilian population which is lacking essential supplies.⁴⁹

As such, the obligation to either provide the essential supplies or to facilitate others to provide such essential supplies ‘is unconditional. The Occupying Power must either ensure that the civilian population receives essential supplies or agree to relief actions.’⁵⁰ It is paramount that today, more than ever, the human rights of Palestinians, particularly in the context of the COVID-19 pandemic, are understood, recognised, and upheld as human rights derived from international law, and that there is a legal obligation, beyond any moral or charitable inclination, to ensure, until such time that the occupation is brought

49 ICRC, *Respecting and Protecting Health Care in Armed Conflicts and in Situations Not Covered by International Humanitarian Law*, available at: <<https://www.icrc.org/en/doc/assets/files/2012/health-care-law-factsheet-icrc-eng.pdf>>.

50 Swiss Federal Department of Foreign Affairs, ICRC, OCHA, and Conflict Dynamics International, ‘Humanitarian Access in Situations of Armed Conflict: Handbook on the International Normative Framework’ Version 2, December 2014, pp. 31.

to a close, that Israel, as the Occupying Power, meets its legal obligations towards the Palestinian people. As explained in the official commentary to the Fourth Geneva Convention:

‘In all cases where occupied territory is inadequately supplied the Occupying Power is bound to accept relief supplies destined for the population...

The Convention not only lays down that the Occupying Power must “agree” to relief schemes on behalf of the population, but insists that it must “facilitate” them by all the means at its disposal. The occupation authorities must therefore co-operate wholeheartedly in the rapid and scrupulous execution of these schemes.⁵¹

51 Jean Pictet et al (eds), *Commentary to the Fourth Geneva Convention* (ICRC, 1958), pp. 320.

International human rights law applicable to Palestinians on both sides of the Green Line

Under international human rights law, Palestinians on both sides of the Green Line are entitled to respect, protection, and fulfilment of their right to the highest attainable standard of physical and mental health, as enshrined in Article 12(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁵² In its General Comment No. 14 (2000) on the right to health, the Committee for Economic, Social and Cultural Rights CESCR stressed that:

‘In all circumstances, in times of peace and during conflict, States have an obligation to maintain a functioning health-care system. They must maintain essential primary health care, access to minimum essential food, basic shelter, housing and sanitation, and an adequate supply of safe and potable water, as well as provide essential drugs, while respecting the principles of non-discrimination and equitable access. States must also design and implement public health strategies.’⁵³

CESCR has further affirmed that, in line with their core obligations to fulfil economic, social, and cultural rights, States must ‘take measures to prevent, treat and control epidemic and endemic diseases.’⁵⁴ Consistent with the findings of the various UN human rights treaty bodies, in its November 2019 Concluding Observations on Israel, CESCR expressed its deep concern:

‘about the severe impact of the policies adopted by the State party relating to the Occupied Palestinian Territory, namely the closure policy and the related permit regime regarding the Gaza Strip and the occupation

52 *International Covenant on Economic, Social and Cultural Rights* (adopted 16 December 1966, entry into force 3 January 1976) 993 UNTS 3 (ICESCR).

53 CESCR, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Article 12), 11 August 2000, UN Doc. E/C.12/2000/4, para. 47.

54 *Ibid.*, para. 44.c.

and settlement policy in the West Bank, including East Jerusalem, on the enjoyment of Covenant rights by people living there, including the rights to work, food, water and sanitation, health and education, and to their cultural rights.⁵⁵

The Committee was ‘also concerned about the disproportionately poor health status of the Arab and Bedouin populations in the State party, including the disproportionately higher rates of infant mortality compared with those of the general population,⁵⁶ and recommended that Israel take concrete measures to address the disproportionately poor health status of Palestinians.⁵⁷

This recommendation was reiterated in December 2019 by the UN Committee on the Elimination of Racial Discrimination (CERD),⁵⁸ which recalled its General Recommendation No. 19 (1995) concerning the prevention, prohibition and eradication of all policies and practices of racial segregation and apartheid, and urged Israel ‘to eradicate all forms of segregation between Jewish and non-Jewish communities and any such policies or practices which severely and disproportionately affect the Palestinian population in Israel proper and in the Occupied Palestinian Territory.⁵⁹ At the time, Al-Haq and partner organisations welcomed CERD’s concluding observations as highlighting ‘for the first time, Israeli policies and practices of racial segregation and apartheid over the Palestinian people on both sides of the Green Line.⁶⁰

55 CESCR, Concluding observations on the fourth periodic report of Israel, 12 November 2019, UN Doc. E/C.12/ISR/CO/4, para. 10.

56 *Ibid.*, para. 54.

57 *Ibid.*, para. 55.

58 CERD, Concluding observations on the combined seventeenth to nineteenth reports of Israel, 12 December 2019, UN Doc. CERD/C/ISR/CO/17-19, para. 39(c).

59 *Ibid.*, para. 23.

60 Al-Haq, ‘Human rights organisations welcome Concluding Observations of the UN Committee on the Elimination of Racial Discrimination on racial segregation and apartheid on both sides of the Green Line,’ 21 December 2019, available at: <<http://www.alhaq.org/advocacy/16324.html>>.

Discussing the human right to health in the context of occupation, an expert meeting of the ICRC heard that:

‘its minimum normative content consisted of elements of health care and preventive measures. It implied, in particular, obligations to guarantee the following: access without discrimination to medicines, medical equipment and medical services; an adequate supply of safe drinking water; and the possibility of obtaining essential medicines as defined by the World Health Organization. Some experts stressed that non-compliance with these obligations could not be justified under any circumstances whatsoever. Consequently, these experts deemed these obligations to be non-derogable.’⁶¹

While the UN High Commissioner for Human Rights has urged ‘authorities in countries affected by COVID-19 to take all necessary steps to address incidents of xenophobia or stigmatisation,’⁶² the very basis of Israel’s prolonged military occupation continues to be one of structural racism and the denial of Palestinians’ inalienable rights. While the UN Special Rapporteur on the situation of human rights in the Palestinian Territory occupied since 1967, Professor Michael Lynk, has called on authorities to ‘speedily address any evidence of racism, xenophobia and bigotry during this pandemic,’⁶³ Israel has continued to perpetrate human rights abuses, violations of international humanitarian law, and of international criminal law with respect of the Palestinian people, even during a public health emergency of international

61 Tristan Ferraro (ed), Expert Meeting: *Occupation and Other Forms of Administration of Foreign Territory Report* (ICRC, 2012), pp. 66, available at: <<https://www.icrc.org/en/doc/assets/files/publications/icrc-002-4094.pdf>>.

62 OHCHR, ‘Coronavirus: Human rights need to be front and centre in response, says Bachelet,’ 6 March 2020, <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25668&LangID=E>>.

63 OHCHR, ‘COVID-19: Israel has ‘legal duty’ to ensure that Palestinians in OPT receive essential health services – UN expert,’ 19 March 2020, available at: <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25728&LangID=E>>.

concern.

It remains inconceivable that within the context of Israel's prolonged occupation, colonisation, and apartheid regime, the Palestinian right to health can be fully realised, given Israel's sustained discriminatory and unlawful actions, including measures to impede COVID-19 preparedness and response amongst Palestinians.⁶⁴ Instead, the Israeli occupying authorities have taken steps towards implementing plans for further illegal annexation of OPT, illustrating how, despite the COVID-19 pandemic, Israel's colonisation of the OPT continues to be entrenched under the watchful eye of the international community.

64 See, e.g., Al-Haq, 'Civil Society Groups Send Appeal to UN Special Procedures on the Rights and Dignity of Palestinian Workers in Israel during COVID-19,' 15 April 2020, available at: <<http://www.alhaq.org/advocacy/16733.html>>.

4. CONCLUSION

Israel's discriminatory response to the public health emergency created by COVID-19 has been to entrench its subjugation and control over the Palestinian people, as staples of its apartheid regime of systematic racial oppression and domination. To understand COVID-19 as it impacts the Palestinian people requires us to recognise Israeli apartheid as a major obstacle to the full realisation of the individual and collective rights of all Palestinians, including to the highest attainable standard of physical and mental health.

For Palestinians living under Israeli apartheid, COVID-19 has arrived in an environment in which Israeli authorities have, for decades, systematically exploited legal and political systems on a racially discriminatory basis on both sides of the Green Line, and the Israeli occupation has been – and continues to be – characterised by a framework in which emergency laws and military regulations pursue far-reaching restrictions impacting all aspects of Palestinian life and health.

As the world moved to respond to COVID-19, Israeli authorities resorted to coercive measures to further restrict the rights of Palestinians, employing excessive force, carrying out mass surveillance, imposing closures, and exacerbating Palestinian susceptibilities to the pandemic. Despite calls to release Palestinian prisoners and detainees in Israeli prisons,⁶⁵ Israel's arbitrary arrests and detentions continued, including of volunteers disinfecting streets and distributing food and aid material in East Jerusalem.⁶⁶ It is within this context that, on World Health Day in April 2020, Al-Haq and partners collectively deplored that 'COVID-19 has shed a glaring light on the detrimental impacts

65 OHCHR, 'COVID-19: Israel must release Palestinian prisoners in vulnerable situation, say UN experts,' 24 April 2020, available at: <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25822&LangID=E>>.

66 Al-Haq, JLAC, Medical Aid for Palestinians, *COVID-19 and the Systematic Neglect of Palestinians in East Jerusalem*, Joint Briefing Paper, July 2020, pp. 7-8, available at: <<http://www.alhaq.org/publications/17118.html>>.

of Israel's apartheid regime on the right to health of all Palestinians.⁶⁷

Amidst the pandemic, the importance of addressing the root causes of the ongoing denial of the underlying determinants of Palestinian health cannot be overstated. Thus, the general context of Israel's prolonged military occupation, colonisation, and apartheid regime must be addressed when promoting Palestinian health and the enjoyment of underlying determinants, such as the right to adequate housing, water, and sanitation.

As COVID-19 compounds Palestinian oppression, international justice and accountability are needed now more than ever to bring an end to Israeli impunity. In particular, this requires the immediate opening of a full, thorough, and comprehensive investigation by the International Criminal Court into the Situation in the State of Palestine⁶⁸ and immediate follow-up on the implementation of the recommendations of UN Commissions of Inquiry and Fact-Finding Missions established on Palestine over the past few decades.⁶⁹

Addressing COVID-19 in Palestine requires urgent structural interventions⁷⁰ aimed at bringing an end to Israel's prolonged occupation, colonisation, and apartheid regime, as well as concerted efforts by third States not only to support the Palestinian healthcare system and enable an effective response to the pandemic but, ultimately, to address the root causes prolonging Palestinian oppression.

67 Al-Haq, 'Israeli Apartheid Undermines Palestinian Right to Health Amidst COVID-19 Pandemic,' 7 April 2020, available at: <<http://www.alhaq.org/advocacy/16692.html>>.

68 See, notably, Al-Haq, 'Joint Open Letter to the Office of the Prosecutor of the International Criminal Court: Time to Investigate Crimes in Palestine, Time for Justice,' 29 April 2020, available at: <<http://www.alhaq.org/advocacy/16795.html>>. See also Pearce Clancy, *Review Paper: Response to Arguments Raised in Amici Curiae Submissions in the Situation in the State of Palestine Before the International Criminal Court* (Al-Haq, 2020), available at: <<http://www.alhaq.org/publications/16797.html>>.

69 See Al-Haq, 'Al-Haq Welcomes Adoption of UN Commission of Inquiry Recommendations on the Great Return March,' 23 March 2019, available at: <<http://www.alhaq.org/advocacy/6085.html>>. See also Alessandro Tonutti, *International Commissions of Inquiry and Palestine: Overview and Impact* (Al-Haq Center for Applied International Law, 2016), available at: <<http://www.alhaq.org/publications/8062.html>>.

70 Paul Farmer, Bruce Nizeye, Sara Stulac, Salmaan Keshavjee, 'Structural Violence and Clinical Medicine,' 3 *PLoS Medicine* 10, 24 October 2006, available at: <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1621099/>>.

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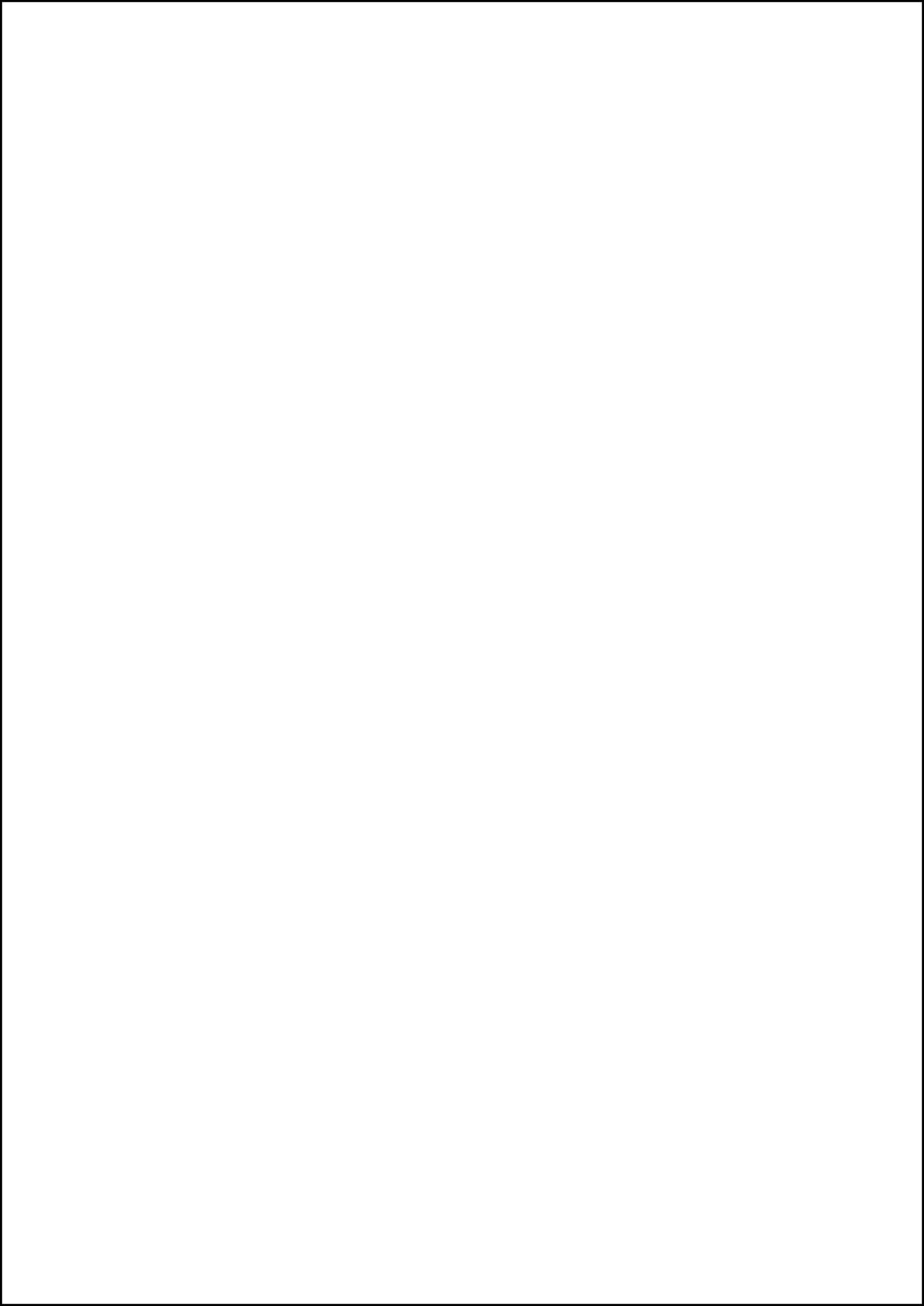
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AL-HAQ

About Al-Haq

Al-Haq is an independent Palestinian non-governmental human rights organisation based in Ramallah in the Occupied Palestinian Territory (OPT). Established in 1979 to protect and promote human rights and the rule of law in the OPT, the organisation has special consultative status with the United Nations Economic and Social Council.

Al-Haq documents violations of the individual and collective rights of Palestinians in the OPT, irrespective of the identity of the perpetrator, and seeks to end such breaches by way of advocacy before national and international mechanisms and by holding the violators accountable. Al-Haq conducts research; prepares reports, studies and interventions on the breaches of international human rights and humanitarian law in the OPT; and undertakes advocacy before local, regional and international bodies. Al-Haq also cooperates with Palestinian civil society organisations and governmental institutions in order to ensure that international human rights standards are reflected in Palestinian law and policies. Al-Haq has a specialised international law library for the use of its staff and the local community.

Al-Haq is the West Bank affiliate of the International Commission of Jurists- Geneva, and is a member of the Euro-Mediterranean Human Rights Network (EMHRN), the World Organisation Against Torture (OMCT), the International Federation for Human Rights (FIDH), Habitat International Coalition (HIC), ESCR-Net – The International Network for Economic, Social and Cultural Rights, the Palestinian Human Rights Organizations Council (PHROC), and the Palestinian NGO Network (PNGO). In 2018, Al-Haq was a co-recipient of the French Republic Human Rights Award, whereas in 2019, Al-Haq was the recipient of the Human Rights and Business Award.

