



COVID-19 AND THE SYSTEMATIC NEGLECT OF PALESTINIANS IN EAST JERUSALEM

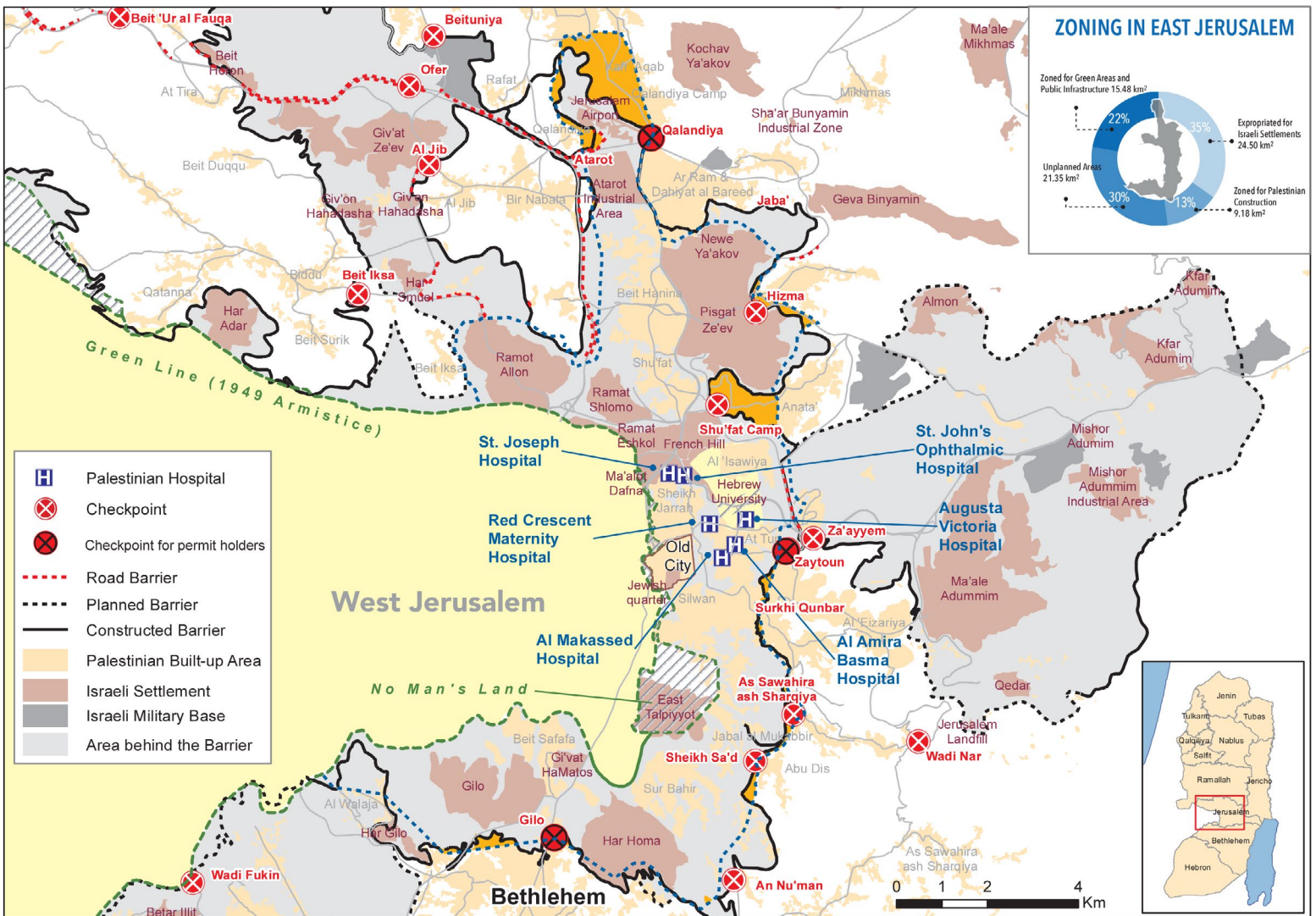
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Zoning in East Jerusalem. Source: OCHA.

INTRODUCTION

Around the world, COVID-19 has exposed structural weakness not only in States' responses to the pandemic but also their long-standing failures to fulfil fundamental human rights, in particular economic, social, and cultural rights. As such, the pandemic has exacerbated situations of discrimination, injustice, and underlying human rights abuses, including for the Palestinian people.¹ This has been particularly the case in occupied East Jerusalem, where the Israeli occupation meets illegal annexation, structural discrimination, and decades of institutionalised neglect and de-development of Palestinian healthcare.



EAST JERUSALEM BEFORE COVID-19: PROLONGED OCCUPATION, ANNEXATION, AND IMPUNITY

Israel occupied the West Bank, including East Jerusalem, and the Gaza Strip, in 1967, extending its laws and jurisdiction to occupied East Jerusalem, in violation of the absolute prohibition on the acquisition of territory by force in international law.² In 1980, the *de jure* annexation of East Jerusalem, already formalised in 1967, was given a constitutional status in Israeli law through its codification in Israel's 'Basic Law' on Jerusalem, which the United Nations (UN) Security Council considered was "null and void and must be rescinded forthwith."³ In Resolution 478 of 1980, the Security Council decided not to recognise the 'Basic Law' and called on all States that have established diplomatic missions in Jerusalem to withdraw them from the city.⁴

In order to institutionalise Palestinian dispossession, Israel, the Occupying Power, imposed a precarious 'permanent resident' status on Palestinians in Jerusalem in 1967.⁵ Carrying out a population census in the city in the aftermath of the war, Israeli occupying authorities only registered those Palestinians who were physically present in the city at the time. Palestinians who were absent during the census, including Palestinian refugees who were

denied their right of return and Palestinians who found themselves elsewhere at the time, whether for work, studies, or otherwise, were never counted. They, and their descendants, were arbitrarily stripped of their residency rights in Jerusalem, despite a generations-long connection and family ties to the city.

Since 1967, Israel's institutionalised dispossession of Palestinians from Jerusalem has continued. Through discriminatory 'demographic goals' enshrined in master plans for the city, the Jerusalem Municipality has continuously and overtly sought to drive Palestinian transfer from the city while seeking to maintain an Israeli-Jewish demographic majority.⁶ The 'permanent residency' status imposed on Palestinians, precarious as it already was, rendered Palestinian Jerusalemites stateless in their own land. They are increasingly required to continuously prove that their so-called 'centre of life' is in Jerusalem to retain the right to live in the city of their birth. Essentially treated like foreigners in their own land, Palestinians risk losing their permanent residency status in Jerusalem, and the attendant social benefits, including access to healthcare should they fail, at any

point to furnish proof of 'centre of life'. Palestinian residency rights can be withdrawn, for example, should Palestinians leave Jerusalem to study or work abroad or even move elsewhere in the occupied West Bank. Israel has revoked the permanent residency rights of over 14,600 Palestinians from Jerusalem under such circumstances since 1967.⁷

Today, some 370,000 Palestinians are residents of occupied East Jerusalem. They account for some 40 per cent of the city's population. They are required to pay taxes to the Israeli occupying authorities but do not receive the same municipal services as Israeli Jews, including settlers illegally residing in occupied East Jerusalem. They face discriminatory planning and zoning, and are only allowed to build on 13 per cent of the land in East Jerusalem, much of which is already built up. Only seven percent of housing permits in the city are granted to Palestinians,⁸ forcing most to build without Israeli-issued permits in order to sustain natural population growth, and who face the demolition of their homes by Israeli occupying authorities as a result.⁹ In 2019, Al-Haq documented the displacement of 236 Palestinians as a result of house demolitions in Jerusalem, including 122 children.¹⁰ In addition, the Jerusalem Municipality deliberately avoids significantly investing in infrastructure and services in Palestinian neighbourhoods,¹¹ where over 72 per cent of all Palestinians live below the poverty line.¹² At the same time, Palestinian residents are required to submit requests for 'family unification' for spouses who are not residents of Jerusalem, a very lengthy, cumbersome, and complicated process that largely denies Palestinians equality in the right to family life and marriage.¹³

In 2003, the Israeli occupying authorities began the construction of the Wall in the West Bank, including in and around East Jerusalem. The Wall and its associated permit and closure regime, including severe movement and access restrictions, has completely sealed off Palestinians in the city of Jerusalem from the rest of the West Bank, entrenching the isolation of Jerusalem and the

fragmentation of the Palestinian people.¹⁴ The route of the Wall, which represents the most significant change to Jerusalem's landscape since 1967, was designed to incorporate Israeli settlements in the occupied West Bank, while separating densely-populated Palestinian neighbourhoods from Jerusalem, even though they lie within Jerusalem's municipal boundaries.

About a third of Palestinian residents live in Jerusalem neighbourhoods behind the Wall, which include Kufr 'Aqab to the north and Shu'fat refugee camp and 'Anata to the northeast. Israeli checkpoints physically separate them from the rest of the city. Over the years, Israel's Jerusalem Municipality and various Israeli government representatives have deliberately neglected these neighbourhoods, effectively absolving themselves of responsibility towards upholding the rights of about a third of East Jerusalem's Palestinian residents. Despite these Palestinian neighbourhoods being occupied and under Israel's effective control, they have essentially become a no-man's-land. However, Israeli military raids, arrest operations, as well as house demolitions continue in some of the areas, notably in Shu'fat refugee camp.¹⁵

The Wall and its associated permit and closure regime has also severely impacted the access of Palestinians from the rest of the occupied West Bank to East Jerusalem, whose six non-government hospitals are the main providers of routine, emergency, secondary, and tertiary care for Palestinian from the West Bank and Gaza Strip.¹⁶ Patients and staff require a permit from the Israeli occupying authorities to access care or their places of employment. In 2018, the total number of referrals of patients to East Jerusalem hospitals from the West Bank and Gaza Strip was 43,256, representing 39.4 per cent of the referrals for treatment by the Palestinian Health Ministry.¹⁷ The process of obtaining a permit is complicated and difficult and is reportedly incredibly stressful and confusing for the patients themselves and their family members.¹⁸



EAST JERUSALEM DURING COVID-19: BETWEEN SYSTEMATIC NEGLECT AND HEALTHCARE DE-DEVELOPMENT

Israel's fragmentation of the Palestinian people and de-development of Palestinian healthcare,¹⁹ as part of a systematic denial of Palestinians' rights, has created a context of extreme vulnerability for Palestinians in Jerusalem, where the population density in Palestinian neighbourhoods is double that of Jewish ones,²⁰ and where the inequity of distribution of social determinants of health between Palestinians and Israeli-Jews is evident.²¹ In this context, Palestinians have become ill-equipped to deal with any public health crisis, let alone the outbreak of a pandemic such as COVID-19.

The susceptibility of Palestinians to the pandemic is compounded by specific patterns that have characterised Israel's discriminatory response to the COVID-19 outbreak in East Jerusalem. This has included long delays in opening testing centres for Palestinians in East Jerusalem, delays in the provision of quarantine facilities, harassment, arrests, and persecution of local volunteers distributing aid materials and foodstuffs, closures of community-led initiatives to contain COVID-19 and raise awareness

as to the pandemic, and the initial failure even to provide data on the numbers and rate of infections in Palestinian communities as well as to issue information and guidance for the Arabic-speaking public.

According to estimates by the Jerusalem Alliance to Confront the Coronavirus Pandemic, an *ad hoc* umbrella group of Palestinian civil society organisations and community-based organisations established on 15 March 2020,²² the hardest-hit communities by the coronavirus have been the Palestinian neighbourhoods of Silwan, Shu'fat refugee camp, Kufr 'Aqab, and Issawiyeh. Palestinian residents of these neighbourhoods already faced extreme housing shortages and overcrowding before the pandemic, due to Israel's refusal to grant them building permits, making social distancing and self-isolation virtually impossible.

The de-development of Palestinian healthcare has been exacerbated by chronic underfunding of East Jerusalem hospitals, which impacts the delivery of medical drugs and treatment.²³ The acute shortages

of ICU beds, ventilators, and personal protective equipment in Palestinian hospitals have further undermined the capacity of Palestinian hospitals in the city to cope with the COVID-19 pandemic.²⁴ These shortages have been compounded by the 2018 decision by the United States administration to cut funding to East Jerusalem hospitals,²⁵ which were to receive USD 25 million in funding to cover costs for patients referred by the Palestinian Health Ministry, according to a budget approved by the US Congress.²⁶ It is arguably the delays in carrying out testing in East Jerusalem, as in Palestinian villages and towns within the Green Line,²⁷ that most powerfully articulates the Israeli occupying authorities' negligent conduct vis-à-vis the containment of COVID-19 in occupied East Jerusalem.

Lack of testing facilities

The Israeli Health Ministry confirmed the country's first COVID-19 case on 21 February 2020 but it was not until 2 April 2020, and following legal pressure by Palestinian human rights organisations, that Israeli medical services set up a drive-through testing facility in occupied East Jerusalem, specifically in Jabal Al-Mukabber neighbourhood. This discriminatory delay in responding to the outbreak of the pandemic in Palestinian communities in East Jerusalem is redolent of Israel's general attitude towards the Palestinian people, including Palestinian citizens of Israel.

As far as Palestinian communities beyond the Wall are concerned, the first testing centres opened as late as 13 April 2020, nearly two months after the first confirmed cases, and only following a petition to the Israeli High Court of Justice by Palestinian human rights group Adalah.²⁸ Today, the four Israeli health maintenance organisations (Clalit, Maccabi, Meuhedet, and Leumit) each operate a COVID-19 testing facility in East Jerusalem. Yet, eligibility to be tested in these facilities is conditioned upon membership in a private Israeli health maintenance

organisation, which a significant portion of Palestinians lack. Free healthcare in Jerusalem is also only available to those who hold a 'permanent residency' status, but thousands of West Bank Palestinians married to Palestinian Jerusalem residents are denied residency and therefore healthcare. So are Palestinian children who are not registered by the Israeli Ministry of Interior and Palestinian Jerusalemites whose residency has been arbitrarily revoked.

Not only does Israel's delay in opening testing centres and clinics for Palestinians in East Jerusalem sharply contrast with the urgency and speed in reacting to the needs of the Israeli-Jewish population, it also does not meet the standard obligation of an Occupying Power under international humanitarian law, as detailed below. The delay has also cost an already-hampered Palestinian medical infrastructure in the city precious time to prepare with the scarce resources available to them.

The main quarantine facility for Palestinian patients or those who have been in contact with them was set up at St. George Hotel in East Jerusalem. It has been exclusively funded by Palestinians and run by Palestinian volunteers, but can only serve a limited number of Palestinian residents. Palestinians in Issawiyeh, for instance, whose relatives have tested positive for the coronavirus complained that Magen David Adom, Israel's emergency medical service, has been late in processing and responding to their requests to be quarantined.

Inaccurate and unreliable data to track the spread of COVID-19

Due to the reality of Israel's illegal annexation of Jerusalem,²⁹ only the Israeli Health Ministry has access to figures and rates of infections amongst Palestinians in East Jerusalem, as is the case within the Green Line. In the absence of disaggregated data for East Jerusalem, the available COVID-19 numbers

come from three different bodies: the Israeli Health Ministry, the Israeli occupation's Jerusalem Municipality, and local Palestinian grassroots groups working under the umbrella of the Jerusalem Alliance to Confront the Coronavirus Pandemic.

A clear disparity exists and has undermined the ability of both the Palestinian Health Ministry, which does not have access to East Jerusalem patient files, and the World Health Organization (WHO) to adequately assess the scale of the outbreak in occupied East Jerusalem, as an integral part of the Occupied Palestinian Territory (OPT). Therefore, the Palestinian Health Ministry initially only reported COVID-19 cases in the West Bank and Gaza Strip, excluding East Jerusalem. As a result, WHO, whose figures are taken from those officially reported by the Palestinian Health Ministry, also excluded East Jerusalem cases in their COVID-19 figures for the OPT.

Harassment, arrests, and persecution of Palestinian health activists

There are long-standing attacks on Palestinian healthcare, compounded by the widespread and systematic targeting of Palestinian health workers and health infrastructure in East Jerusalem and across the OPT, carried out with impunity.³⁰

Since the outbreak of the COVID-19 pandemic, the Israeli occupying forces have systematically targeted, arrested, and briefly detained Palestinians distributing posters in East Jerusalem neighbourhoods to raise awareness on precautionary measures needed in the face of the pandemic, as was the case in the Old City on 14 March. They have also detained Palestinian youths who volunteered to clean and disinfect public spaces such as mosques.³¹ Overall, while UN human rights experts urged the Israeli government to release prisoners to prevent a COVID-19 outbreak in detention,³² the Israeli occupying authorities continued to carry out arbitrary arrests

of Palestinians in occupied East Jerusalem. Amongst those arrested during the COVID-19 period were the Palestinian governor of Jerusalem, Adnan Ghaith, and the Palestinian Minister for Jerusalem Affairs, Fadi Al-Hidmi, for alleged Palestinian Authority (PA) activity in Jerusalem.³³

During the weeks-long vacuum created by Israel's lack of responsiveness to address the COVID-19 pandemic in East Jerusalem, the PA attempted to fill the gap, either by directly sending PA officers to enforce preventive measures in Kufr 'Aqab, behind the Wall, or by helping set up a testing facility in Silwan. In the former case, the Israeli occupying forces later raided Kufr 'Aqab, a neighbourhood consistently deprived of the most basic services, to remove PA signs. In the latter, the Israeli occupying authorities raided the testing facility set up in Silwan and shut it down,³⁴ impacting over 60,000 Palestinian residents of Silwan during the pandemic, originally arguing that the facility posed a threat to public health because it was run by unlicensed doctors. The doctor in question who administered the tests was, in fact, licensed in Israel, as confirmed by the doctor himself, but the pretext for the centre's closure by the occupying authorities was that its activities were overseen by the PA.³⁵ Regardless of the pretext, the very fact that Palestinians were forced to set up a testing centre on their own, and the subsequent closure of the centre by the Occupying Power, is a testament to Israel's consistent failure to meet its obligations to uphold the rights to health and life of Palestinians without discrimination.

Palestinian hospitals at breaking point

Amongst the Palestinian-run hospitals in East Jerusalem, Al-Makassed Hospital, Augusta Victoria Hospital, and Saint Joseph Hospital - the three hospitals designated to manage suspected and confirmed COVID-19 cases amongst Palestinians - only have 22 ventilators and 62 beds for coronavirus

patients between them; of these, 12 ventilators are reserved for patients of Augusta Victoria Hospital with extremely compromised immune systems. Al-Makassed Hospital has a coronavirus unit with 22 beds, while Saint Joseph Hospital has a wing prepared with 28 beds.³⁶

The pandemic hit at a time when all of these hospitals were already facing exceptionally dire economic conditions and chronic underfunding.³⁷ Critically, Al-Makassed, the largest Palestinian hospital in the city, has been struggling for its very survival for the last two years. Both Al-Makassed and Saint Joseph Hospital received additional funding from the Israeli Health Ministry since the outbreak of the pandemic, with the Israeli Health Ministry having delivered NIS 25 million worth of personal protective equipment to East Jerusalem hospitals, including over 50,000 face masks and 10,000 gloves.³⁸ Yet, this does not come close to covering the needs of some 370,000 Palestinian residents of East Jerusalem.³⁹

While Israeli hospitals are also open to Palestinian patients in Jerusalem, it is the right of the occupied Palestinian people to develop a functioning healthcare system and to provide and receive the treatment they need in Palestinian hospitals. The availability of Israeli hospitals also does not absolve the Israeli occupying authorities from responsibility for the deliberate weakening, de-development, and systematic neglect of Palestinian hospitals in East Jerusalem.

COVID-19 meets Israeli bureaucracy, prolonged occupation, and militarism

The vague and onerous requirement imposed on Palestinian residents of Jerusalem to continuously prove that their 'centre of life' is in Jerusalem jeopardises access to healthcare for thousands of Jerusalemite Palestinians. They are also particularly wary of abusive use of surveillance technology and counter-terrorism rhetoric by the Israeli occupying

authorities, in particular through the Shin Bet, the Israeli intelligence agency, throughout the state of emergency.⁴⁰ Israel's efforts to confront the COVID-19 pandemic have been led by its National Security Council, increasing fears over racially-motivated policing and profiling of Palestinians. Throughout the world, social determinants of health dictate communities' capacities to confront diseases. Occupied East Jerusalem is no exception as the COVID-19 pandemic has both exposed and exacerbated pre-existing political, economic, social, and health inequities and injustices.





LEGAL ANALYSIS

Israel, the Occupying Power, is bound to respect, protect, and fulfil international humanitarian law and international human rights law in the OPT, including in occupied and annexed East Jerusalem.

International humanitarian law

Article 56 of the Fourth Geneva Convention requires the Occupying Power to adopt the necessary prophylactic measures to combat the spread of epidemics, including the education of the general public, the distribution of medicines, the organisation of medical examinations and disinfection, the establishment of stocks of medical supplies, the

dispatch of medical teams to areas of outbreak, and the opening of new hospitals and medical centres where necessary.⁴¹ In addition, where the resources of the occupied territory are inadequate, it is the Occupying Power's responsibility to ensure to the fullest extent of the means available to it the necessary food and medical supplies of the civilian population.⁴² The Occupying Power is further under an obligation to provide relief schemes to the civilian population in occupied territory, where supplies are insufficient.⁴³

As such, under international humanitarian law, Israel must provide the essential supplies needed by Palestinians in East Jerusalem to respond to the

threat of COVID-19 or otherwise facilitate others to provide such essential supplies.⁴⁴ Israel also has an obligation to establish testing centres and open clinics, to educate the general public in a language they can understand, and to send medical teams to areas of outbreak. At any rate, Israel, as the Occupying Power, may not hamper the provision of essential supplies and foodstuffs, nor the delivery of awareness raising materials to Palestinians in East Jerusalem. Rather than arresting volunteers for disinfecting streets in East Jerusalem and shutting down a centre set up to test COVID-19, such as in Silwan, it is incumbent upon the Israeli occupying authorities, in line with their obligation under Article 56 of the Fourth Geneva Convention, to disinfect streets and set up clinics and testing centres to uphold the right to health and well-being of the protected occupied population. Accordingly, Israel is in violation of its obligations as Occupying Power under international humanitarian law in its failure to adequately respond to the COVID-19 pandemic in East Jerusalem.

International human rights law

Under international human rights law, Israel must respect, protect, and fulfil the right to the highest attainable standard of physical and mental health of Palestinians, including in occupied East Jerusalem, in line with Article 12(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁴⁵ This includes an obligation to maintain a functioning healthcare system in East Jerusalem and to provide essential medicines and supplies as well as access to healthcare for Palestinians throughout the OPT, even where closures are in place. This means that, also under international human rights law, Israel has an obligation to strengthen rather than to hamper the functioning and development of Palestinian hospitals in East Jerusalem and to ensure that Palestinian hospitals are able to adequately respond, with the necessary resources and equipment, to the

COVID-19 pandemic. Moreover, the ICESCR requires States parties to “take measures to prevent, treat and control epidemic and endemic diseases.”⁴⁶

Fulfilment of the right to health is further closely related to the realisation of other fundamental rights and freedoms, with the underlying determinants of health and well-being including the right to adequate housing, water, sanitation, and food, the right to work and education, the right of access to information, the right to be free from torture and other ill-treatment, and the right to a life of dignity.⁴⁷ Yet, Israel’s discriminatory policies targeting the Palestinian people, including denial of adequate housing, which results in overcrowding and the continued displacement and dispossession of Palestinians in East Jerusalem, have undermined the rights of Palestinians to enjoy the underlying determinants of health.

WHO recognises that: “The underlying conditions of life needed for enjoyment of good health and wellbeing by Palestinians are... detrimentally affected by the situation of ongoing military occupation.”⁴⁸ Moreover, WHO has highlighted that: “Assessment of underlying determinants of health is closely linked to assessment of what determines inequalities in health outcomes,” and that “health inequities are the unjust systematic differences in health outcomes among different populations that result from the political, economic and social conditions in which people are born, grow, live, work and age.”⁴⁹



CONCLUSION AND RECOMMENDATIONS

As a second wave of the COVID-19 pandemic appears to be breaking out, questions regarding its handling regain importance. Beyond the grave health concerns the pandemic has caused, its ramifications threaten to intensify long-standing grievances and systemic discrimination. Thus, any recommendations based on the facts presented hitherto need to take into account not just the direct health challenges caused by the coronavirus, but the general context of Israel's prolonged occupation and human rights abuses against Palestinians. A return to pre-COVID-19 normality in Jerusalem would only signify the entrenchment of existing abuses and the aggravation of an unjust reality for Palestinians. Israel, as the Occupying Power, bears the primary responsibility for the health and well-being of the Palestinian people, including in occupied East Jerusalem. Due to

a persistent failure to uphold the right to health of Palestinians, and ongoing impunity for widespread and systematic human rights violations committed against the Palestinian people. Accordingly, we call on third States to:

1. Uphold their international law responsibility to recognise the illegality of Israel's annexation of the city of Jerusalem, the occupied Syrian Golan, and any other parts of the occupied territory, not to aid or assist in maintaining the illegal situation, and to cooperate to bring the illegal situation to an end;
2. Support the Palestinian healthcare system in general and the Palestinian hospital network in occupied East Jerusalem in particular;



3. Ensure access to East Jerusalem hospitals for all patients from the OPT, including the Gaza Strip, in line with the recommendations of the UN Commission of Inquiry on 2018 protests in the OPT;⁵⁰
4. Put pressure on Israel to comply with its obligations to halt all forms of collective punishment as well as policies and practices driving Palestinian displacement and dispossession in Jerusalem, including discriminatory planning and zoning resulting in house demolitions and the denial of building permits, the arbitrary revocation of residency rights, and the denial of family unification, as well as policies of systematic neglect, which disproportionately impact Palestinian health outcomes;
5. Promote Palestinians' enjoyment of the underlying determinants of health throughout the OPT, including East Jerusalem, and within the Green Line, including their right to adequate housing, water and sanitation, work, and education, as essential to upholding their right to the highest attainable standard of physical and mental health;
6. Address root causes undermining the fulfilment of the right to health of Palestinians, by upholding the inalienable rights of the Palestinian people to self-determination, including permanent sovereignty over natural resources, and the right of return of Palestinian refugees to their homes, lands, and property;
7. Support genuine justice and accountability for widespread and systematic human rights violations against the Palestinian people, including through international legal avenues, as a way to prevent future violations, end impunity, and provide justice to victims.

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39 *Ibid.*

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41 Jean Pictet, *Commentary on the Fourth Geneva Convention* (International Committee of the Red Cross, 1958), Commentary on Article 56, p. 313.

42 *Ibid.*; *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 (hereinafter ‘Fourth Geneva Convention’), Article 55(1).

43 Article 59(1), Fourth Geneva Convention

44 Jean Pictet, *Commentary on the Fourth Geneva Convention* (International Committee of the Red Cross, 1958), Commentary on Article 59, p. 320.

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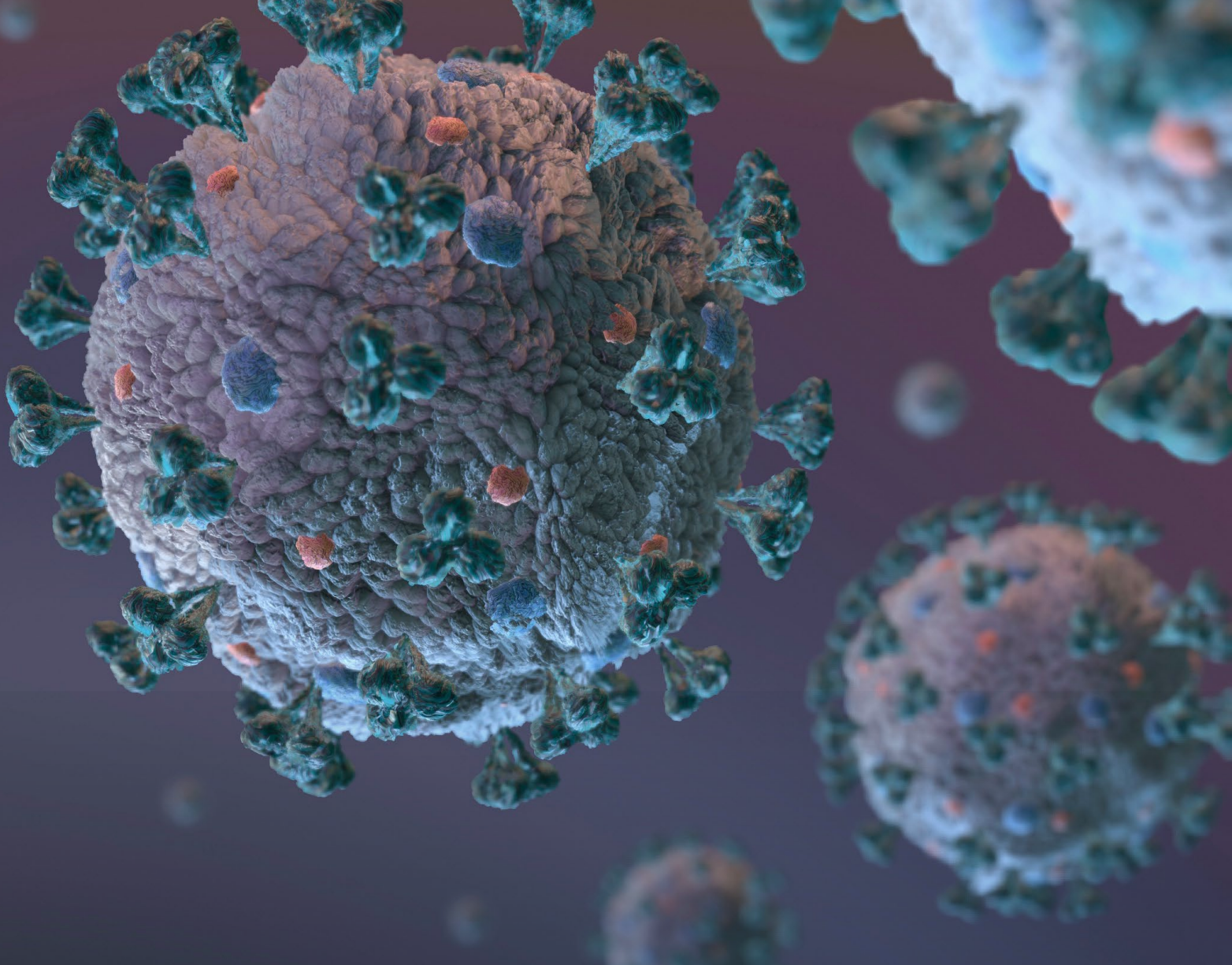
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47 *Ibid.*, paras. 4 and 47; WHO, *Right to Health 2018*, p. 55, available at: <http://www.emro.who.int/images/stories/palestine/documents/who_right_to_health_2018_web-final.pdf?ua=1>.

48 *Ibid.*, p. 9.

49 *Ibid.*, p. 55.

50 Human Rights Council, “Report of the independent international commission of inquiry on the protests in the Occupied Palestinian Territory,” 25 February 2019, UN Doc. A/HRC/40/74, para. 124.



AL - HAQ

Al-Haq is an independent Palestinian non-governmental human rights organisation based in Ramallah, West Bank. Al-Haq was established in 1979 to protect and promote human rights and the rule of law in the occupied Palestinian territory. Al-Haq documents violations of Palestinian rights, irrespective of the identity of the perpetrator, and seeks to end such breaches through advocacy before national and international mechanisms.

www.alhaq.org



The Jerusalem Legal Aid and Human Rights Center (JLAC) is one of the pioneering human rights organizations in Palestine providing legal aid to vulnerable communities in combating human rights violations. It was established in 1974 by the American Friends Service Committee (AFSC)- formerly known as the Quaker Service Information and Legal Aid Center.

www.jlac.ps



Medical Aid for Palestinians (MAP) works for the health and dignity of Palestinians living under occupation and as refugees. MAP provides immediate medical aid to those in great need, while also developing local capacity and skills to ensure the long-term development of the Palestinian healthcare system.

www.map-uk.org