

## Al-Haq's Follow-Up Written Responses to the United Nations Committee on Economic,

### Social and Cultural Rights for Israel's Fourth Periodic Review

**Date: 8 October 2019**

On 30 September 2019, the United Nations (UN) Committee on Economic, Social and Cultural Rights (hereinafter, 'CESCR' or 'the Committee') held its meeting with civil society organisations, including human rights organisations, ahead of the fourth periodic review of the State of Israel by the Committee on 2 and 3 October 2019. Following interventions made by several human rights organisations on Israel's failure to respect, protect, and fulfil the rights of the Palestinian people under Israel's effective control, as enshrined in the International Covenant on Economic, Social and Cultural Rights (hereinafter, 'ICESCR' or 'the Covenant'), members of the Committee posed questions to civil society organisations. In this follow-up written submission, Al-Haq provides answers to questions relevant to Al-Haq's scope of work.

Al-Haq would like to recall that Israel has long infringed on the rights of the Palestinian people, notably within the context of its prolonged military occupation of the West Bank, including East Jerusalem, and the Gaza Strip, denying Palestinians their fundamental right to self-determination and permanent sovereignty over natural resources, along other social, economic, and cultural rights. As provided in the joint submission to the Committee on 6 September 2019,<sup>1</sup> for more than 50 years, Israel has devised a myriad of methods to deepen and expand its territorial control in the Occupied Palestinian Territory (OPT), while exploiting land and natural resources therein for the benefit of its economy, its settlement enterprise and associated businesses. To this end, it is important to note that the realisation of human rights, including economic, social and cultural rights for the Palestinian people cannot be genuinely and effectively realised without an end to Israel's prolonged military occupation and associated regime.

<sup>1</sup> Al-Haq, Joint Submission to UN Committee on Economic, Social and Cultural Rights ahead of Israel's Fourth Periodic Review (6 September 2019), available at: <http://www.alhaq.org/advocacy/15138.html>

## 1. Involvement of civil society organisations in the preparation of the State report

The Committee asked about the extent of involvement of civil society organisations in the preparation of the State of Israel's fourth periodic report to CESCR under articles 16 and 17 of the Covenant, due in 2016 (hereinafter 'State report').<sup>2</sup>

It is important to note that Israel does not acknowledge the applicability of the Covenant to Palestinians in the OPT. In fact, the Committee has reiterated its concern in this regard and Israel's refusal to report on the territories it occupies.<sup>3</sup> It should also be noted that Israel does not consult Palestinian organisations in the drafting of its State report. Nonetheless, Palestinian organisations made numerous submissions to the Committee ahead of its fourth periodic review of the State of Israel, despite the myriad attacks, restrictive measures, and smear campaigns that the Israeli authorities and other politically-driven groups have carried out against Palestinian civil society and human rights organisations, and other civil society organisations working towards protecting and promoting the human rights of the Palestinian people.

In addition to the overall deterioration in the human rights situation for Palestinians, including in the OPT, the Israeli Government, embodied in its Ministry for Strategic Affairs and other politically-driven groups, has led and promoted escalated repressive policies and campaigns against civil society and human rights organisations and advocates for Palestinian rights as well as relevant humanitarian organisations, in an attempt to silence and intimidate them and undermine their work. For example, on 19 September 2019, the Israeli occupying forces raided the office of prominent Palestinian human rights organisation Addameer Prisoner Support and Human Rights Association and confiscated equipment and material.<sup>4</sup> On 24 September 2019, the Israeli occupying forces also raided the office of the Union of Palestinian Women's Committees in Hebron and confiscated computers, digital cameras, and other electronics, tampered with desk files and destroyed furniture.<sup>5</sup> Additionally, Israel has previously denied entry to international

<sup>2</sup> CESCR, Fourth periodic report submitted by Israel under articles 16 and 17 of the Covenant, due in 2016, UN Doc. E/C.12/ISR/4, 14 January 2019.

<sup>3</sup> Committee on Economic, Social and Cultural Rights, Thirtieth Session, Concluding Observations of the Committee on Economic, Social and Cultural Rights – Israel, 5-23 May 2003, E/C.12/1/Add.90, para 15.

<sup>4</sup> Al-Haq, Al-Haq Condemns Israeli Occupation Forces Raid on Addameer Prisoner Support and Human Rights Association (20 September 2019), available at: <http://www.alhaq.org/advocacy/15199.html>.

<sup>5</sup> Union of Palestinian Women's Committees, Israeli Occupying Forces Raid the Union of Women's Committees Office in Hebron (24 September 2019), published in Arabic, available at: <http://upwc.org.ps/?p=4420>.



human rights defenders,<sup>6</sup> imposed highly oppressive restrictions on the movement of humanitarian staff in and out of the Gaza Strip,<sup>7</sup> and is currently attempting to deport Human Rights Watch Israel/Palestine Director.<sup>8</sup>

Further, earlier this year, the Israeli Ministry of Strategic Affairs published a report, falsely accusing civil society organisations and human rights defenders with anti-Semitism and the support of ‘terrorism.’ The report is premised on racist caricatures, attempting to paint Palestinian civil society organisations as suspicious and violent in order to discredit and defund them.<sup>9</sup> The report further contains “profiles” on individual staff of various organisations, alleging further spurious links.<sup>10</sup> Meanwhile, Israeli Minister for Strategic Affairs, Gilad Erdan, has accused Palestinian human rights organisations of alleged affiliation with ‘terrorist groups,’<sup>11</sup> and called for their defunding.<sup>12</sup> The European Union has expressly refuted such baseless allegations.<sup>13</sup>

The consistent unsubstantiated institutionalised attacks against civil society organisations are in direct violation of the rights to freedom of expression and association, amounting to an illegal interference with Palestinian civil society, in breach of Israel’s obligations as occupying Power

<sup>6</sup> See Center for Constitutional Rights, Center for Constitutional Rights Executive Director and Board Chair Both Denied Entry into Israel (1 May 2018), available at: <https://ccrjustice.org/home/press-center/press-releases/center-constitutional-rights-executive-director-and-board-chair>.

<sup>7</sup> OCHA, Increased restrictions on the movement of humanitarian staff in and out of Gaza (9 August 2019), available at: <https://www.ochaopt.org/content/increased-restrictions-movement-humanitarian-staff-and-out-gaza>.

<sup>8</sup> Al-Haq, Statement: Israeli Court Orders the Deportation of Human Rights Watch Director Omar Shakir (17 April 2019), available at: <http://www.alhaq.org/advocacy/topics/human-rights-defenders/1392-statement-israeli-court-orders-the-deportation-of-human-rights-watch-director-omar-shakir>.

<sup>9</sup> State of Israel, ‘Terrorists in Suits: The Ties Between NGOs promoting BDS and Terrorist Organizations’ (2019) 7, available at: [https://www.gov.il/en/Departments/General/terrorists\\_in\\_suits](https://www.gov.il/en/Departments/General/terrorists_in_suits)

<sup>10</sup> See, for example, those regarding members of Al-Haq, *ibid.* 37-39.

<sup>11</sup> Jerusalem Post, ‘30 Financial Accounts Associated with BDS-Promoting NGOs Shut Down’ (11 June 2019).

<sup>12</sup> In 2018, the Israeli Ministry of Strategic Affairs published a similar report, geared specifically towards scrutinizing the ‘direct and indirect’ funding by European Union institutions for Palestinian civil society organisations, alleging that such funding “enables these organizations to channel their other resources towards promoting anti-Israel delegitimization and boycotts.” See State of Israel, ‘The Money Trail: The Millions Given by EU Institutions to NGOs with Ties to Terror and Boycotts against Israel’ (2018), available at: [http://eipa.eu.com/publicaffairs/wp-content/uploads/The-Money-Trail\\_English.pdf](http://eipa.eu.com/publicaffairs/wp-content/uploads/The-Money-Trail_English.pdf).

<sup>13</sup> See tweet by EU Delegation to Israel <https://twitter.com/EUinIsrael/status/1087995069616046080>.



under Article 43 of the Hague Regulations of 1907.<sup>14</sup> The goal of such institutionalized campaign of attacks is to further shrink, obstruct, and eliminate the space for civil society organisations in monitoring and addressing systemic human rights violations against the Palestinian people. It is therefore imperative that attempts to do so are roundly condemned and resisted, including by the Committee in order to ensure the ability of human rights organisations and other civil society organisations to continue to contribute to its work and processes.

## 2. Judicial and other remedies to protect the rights of Palestinians

The Committee asked about the possibility and experience of NGOs trying to restore rights under Israeli judicial authorities.

Palestinians have no meaningful access to justice via the Israeli military regime and judiciary established by Israel in the OPT. There are effectively two parallel court systems in operation in the occupied territory: those applying to Palestinians, and those applying to Israeli settlers. This fragmentation has been approved and applied not simply by the military judiciary, but by Israel's civilian judicial system as well, most notably by the High Court of Justice,<sup>15</sup> which has denied Palestinians their property rights, enshrined in its Basic Law, while defending those of Israelis and Israeli settlers within the same territory.<sup>16</sup> In fact, Israel's High Court of Justice has been deemed as "the ultimate rubber stamp for Israeli policies in the OPT, legitimising Israel's illegal actions through veneer of 'legal' judgements."<sup>17</sup>

In addition, impunity granted by the Israeli judicial system for Israeli officials and agents of the State for serious human rights abuses, including killings, has been a prominent feature of the occupation. For example, in April 2018, the Israeli District Court in Jerusalem sentenced an Israeli border policeman to nine months' imprisonment and about 15,000 USD fine for the killing of Nadim Nuwwara in 2014, who was 17 at the time.<sup>18</sup> Such exemplary sentencing raises

<sup>14</sup> Al-Haq, Israeli Ministry of Strategic Affairs Campaign of Institutionalised Harassment Continues with the Alleged Closure of Palestinian NGO's Financial Accounts (19 June 2019), available at: <http://www.alhaq.org/advocacy/6039.html>.

<sup>15</sup> Al-Haq, 'Legitimising the Illegitimate? The Israeli High Court of Justice and the Occupied Palestinian Territory' (2010) 20-21.

<sup>16</sup> *Ibid.*

<sup>17</sup> Al-Haq, 'Legitimising the Illegitimate? The Israeli High Court of Justice and the Occupied Palestinian Territory', 2011, available at: <http://www.alhaq.org/publications/8085.html>

<sup>18</sup> Al-Haq, 'Impunity Prevails Once Again: Israeli Court Sentences IOF Killer of Nadim Nuwwara to Nine Months Imprisonment', 26 April 2018, available at: <http://www.alhaq.org/advocacy/6237.html>



serious concerns about the impartiality and independence of Israel’s judicial system when dealing with cases relevant to Palestinians.

Israeli courts also allow the use of ‘secret evidence’ by the occupying authorities within the military courts during trials against Palestinians for non-descript ‘security’ threats, amounting to a serious and fundamental breach of judicial impartiality and fair trial standards.<sup>19</sup> Such evidence has also been permitted in the High Court of Justice proceedings concerning the constitutionality of laws imposed upon Palestinians.<sup>20</sup> This represents a clear trend in the approach taken by the judicial authorities. As observed by David Kretzmer in his survey of Israeli jurisprudence:

“In almost every legal crossroad, in almost every point where the court had to interpret international law, to establish the boundaries of authority, to declare the legality of a policy ... [it] has chosen the path which strengthened the powers of the military commander, broadened the borders of his authority and legitimized his .... Decisions. [It] dismissed well-established petitions in the cost of breaking basic tenants of legal interpretation and it even sacrificed the consistency of its own decisions when it had to.”<sup>21</sup>

In light of Israel’s continued failure to genuinely provide access to effective remedies for Palestinian victims within its jurisdiction, through its judiciary, and to ensure accountability for serious violations of international human rights and humanitarian law, the Committee should emphasize the relevance and need for international accountability mechanisms, including at the International Criminal Court (ICC), to allow for genuine justice and accountability.

The UN Commission of Inquiry on the 2018 protests in the OPT recommended that the Office of the High Commissioner for Human Rights refer the dossier on suspected perpetrators of international crimes in the OPT to the ICC,<sup>22</sup> and called on third States to activate universal jurisdiction mechanisms,<sup>23</sup> to try suspected perpetrators in their own jurisdictions. Al-Haq submits that international justice and accountability are the only avenue towards bringing Israel’s

<sup>19</sup> *Ibid.* 21-22.

<sup>20</sup> *Ibid.* 23.

<sup>21</sup> David Kretzmer, *The Occupation of Justice: The Supreme Court of Israel and the Occupied Territories* (University of New York Press, 2002).

<sup>22</sup> 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. 126.

<sup>23</sup> *Ibid.* para. 128.





pervasive impunity for widespread and systematic abuses committed in the OPT to an end and calls on the Committee to consider the recommendations delivered by the UN Commission of Inquiry in this regard.

### 3. The Nation-State Law approved in the Israeli Parliament

The Committee asked about the Israeli Nation-State Law approved in the Israeli Knesset and its impact on the non-Jewish population.

The Basic Law: Israel as the Nation-State of the Jewish People (the ‘Nation-State Law’), adopted on 18 July 2018, represents an entrenchment of Israel’s institutionalised regime of racial discrimination and segregation against the Palestinian people, on both sides of the Green Line and in exile, amounting to a regime of systematic racial domination and oppression constitutive of the crime of apartheid against the Palestinian people as a whole.<sup>24</sup> In particular, the adoption of the Nation-State Law entrenches in Israel’s Basic Laws its long-term racial discrimination against the Palestinian people, explicitly disregarding the rights of indigenous Palestinian citizens of Israel, who make up 20 per cent of the population, thereby designating them, officially, as second-class citizens in Israeli law, a status already conferred on them as a matter of State policy and practice since 1948.

The Nation-State Law further extends this two-tiered system into the OPT, defining the right of national self-determination in Palestine as being exclusive to the Jewish people.<sup>25</sup> This exclusivity also extends to the sovereignty over natural wealth and resources in the OPT, attempting to provide an *ex post facto* justification for decades of systemic and illegal exploitation of the OPT’s resources for the benefit of the occupying Power’s economy and that of its illegal settlement enterprise. It must be stressed that the conceptualisation of ‘self-determination’ espoused under the Nation-State Law is fundamentally incompatible with the principle as codified under international law, including under Article 1 of the Covenant, which is the antithesis of such “alien subjugation, domination, and exploitation.”<sup>26</sup>

<sup>24</sup> Al-Haq, Al-Haq and Partners Send Joint Submission to the UN Committee on the Elimination of Racial Discrimination Ahead of Israel’s Review (6 September 2019), available at:

<http://www.alhaq.org/advocacy/15010.html>

<sup>25</sup> Al-Haq, Factsheet: Israel’s “Jewish Nation-Sate Law” and the Occupied Palestinian Territory (23 January 2019), available at: <http://www.alhaq.org/advocacy/6115.html>

<sup>26</sup> See Declaration on the Granting of Independence to Colonial Countries and Peoples, adopted by General Assembly Resolution 1514 (XV), on 14 December 1960, <http://www.un.org/en/decolonization/declaration.shtml>.



Further, the Nation-State Law elevates the establishment of illegal settlements in the occupied West Bank, including East Jerusalem, to the status of a “national value,” indicating a strengthened resolve to accelerate the proliferation of settlements and settlement enterprises, furthering the displacement and transfer of the indigenous Palestinian people. Through the Nation-State Law, Israel has reaffirmed that it considers its illegal settlement enterprise as a fundamental element of State policy. The illegal settlement enterprise is built on appropriated Palestinian land and feeds off the widespread denial of building permits to Palestinians in the OPT and the destruction of their property, structures and homes. Also notable is the destruction of humanitarian structures erected with the funding of foreign donors.<sup>27</sup>

The Nation-State Law also claims that the “State will be open to Jewish immigration and to the gathering of the exiled”, denying the right of hundreds of thousands of Palestinian refugees displaced in and following 1948 and 1967, their descendants, and families, their inalienable right to return to their homes and property, which has been repeatedly recognised by the UN General Assembly and Security Council, and as mandated by international law.<sup>28</sup>

Israel has further entrenched policies and practices of racial segregation and apartheid against Palestinians, resulting in the severe denial of fundamental rights, exemplified in the July 2018 Nation-State Law. In this regard, we urge the Committee to call on Israel to repeal the Basic Law: Israel as the Nation-State of the Jewish People (2018), which aims to nullify the equal recognition, enjoyment, and exercise of all human rights and fundamental freedoms enshrined for the Palestinian people under international human rights law, including under the Covenant.

We further urge the Committee to recognise Israel’s institutionalized and systemic discrimination against Palestinians as one of apartheid. In 2012, the Committee on the Elimination of Racial Discrimination (CERD) expressed its deep concern about Israel’s “policies and practices which may amount to de facto segregation”, considering the two separate legal systems and institutions for Palestinians and Israeli settlers in the OPT, as part of a wider regime imposing systematic racial domination and oppression over the Palestinian people as a whole.

<sup>27</sup> During a six-month period between 2017 and 2018, for example, a total of 60,920 Euros worth of EU-funded structures were destroyed. European External Action Service, Six-Month Report on Demolitions and Confiscations of EU funded structures in the West Bank including East Jerusalem (September 2017-February 2018) (21 March 2018), available at: [https://eeas.europa.eu/delegations/palestine-occupied-palestinian-territory-west-bank-and-gaza-strip/49699/six-month-report-demolitions-and-confiscations-eu-funded-structures-west-bank-including-east\\_en](https://eeas.europa.eu/delegations/palestine-occupied-palestinian-territory-west-bank-and-gaza-strip/49699/six-month-report-demolitions-and-confiscations-eu-funded-structures-west-bank-including-east_en).

<sup>28</sup> See for example: UN General Assembly Resolution 194(III) of 1948, UN Security Council Resolution 242 (1967) and 338 (1973).



To this end, CERD reminded the State of Israel of General Recommendation 19 (1995) “concerning the prevention, prohibition and eradication of all policies and practices of racial segregation and apartheid” and urged the State of Israel to take immediate measures in order to comply with Article 3 of the International Convention on the Elimination of All Forms of Racial Discrimination and to prohibit and eradicate such policies and practices against the Palestinian population in the OPT.<sup>29</sup>

We call on CESCR to recognise that Israel’s regime of systematic racial domination and oppression over Palestinians nullifies their equal enjoyment, as a people, of the rights enshrined under the Covenant, in particular their collective right to self-determination, including permanent sovereignty over natural wealth and resources.

#### 4. Israeli-imposed blockade and closure of the Gaza Strip and the right to health

The Committee asked about potential interim measures that are most likely useful to improve the situation in the occupied Gaza Strip, particularly relevant to the right to the highest attainable standard of physical and mental health, including access to healthcare and medical treatment.

Since 2007, Israel has imposed a 12-year closure of the Gaza Strip by land, air, and sea. The closure amounts to unlawful collective punishment, in violation of international humanitarian law, and has denied Palestinians therein the full enjoyment of their social, economic, cultural, civil, and political rights. As repeatedly warned by UN reports since 2012,<sup>30</sup> Gaza has now become uninhabitable, as a result of Israel’s active punitive de-development policies and practices.<sup>31</sup> The closure has severely impacted all aspects of Palestinians’ lives in the Gaza Strip, particularly affecting the delivery of essential services, including healthcare. As such, the closure remains a root cause of the severe denial of fundamental rights of Palestinians in Gaza, and therefore constitutes a root cause driving the Great Return March demonstrations in the Gaza Strip.

<sup>29</sup> Committee on the Elimination of Racial Discrimination, Eightieth Session, Concluding Observations of the Committee on the Elimination of Racial Discrimination, 9 March 2012, CERD/C/ISR/CO/14-16, para. 24.

<sup>30</sup> UNRWA, Gaza in 2020: A Liveable Place? (28 August 2012), available at: <https://www.unrwa.org/newsroom/press-releases/gaza-2020-liveable-place>.

<sup>31</sup> Al-Haq has recently launched a short film titled “Gaza: Uninhabitable,” highlighting the unliveable situation created in the occupied Gaza Strip as a result of Israel’s prolonged closure. See Al-Haq, Gaza: Uninhabitable (23 September 2019), available at: <http://www.alhaq.org/media/15226.html>.





In fact, Israel's imposed closure on the Gaza Strip has led to a serious deterioration in the availability and accessibility of healthcare and medical treatment for Palestinians therein, including injured protesters from the demonstrations. The health sector in the Gaza Strip, at the verge of collapse, has persistently suffered from "chronic shortages of certain equipment and supplies," while patients have been continuously denied exit out of the Gaza Strip to receive medical treatment in the rest of the OPT, in Israel, or abroad.<sup>32</sup>

The UN Commission of Inquiry on the 2018 protests in the OPT called on Israel, as occupying Power, to ensure the treatment of injured protesters, including prompt access to treatment outside of Gaza.<sup>33</sup> In addition, the Commission of Inquiry called on Israel to "[e]nsure timely access of medical and all other humanitarian workers to Gaza, including to provide treatment to those injured in the context of demonstrations,"<sup>34</sup> and to "[e]nsure efficient coordination for entry of medical items and equipment into Gaza, and remove the prohibition of entry applied to items with legitimate protective and medical uses, including carbon fibre components for the treatment of limb injuries."<sup>35</sup> Critically, the Commission of Inquiry called on Israel to "[I]ft the blockade on Gaza with immediate effect."<sup>36</sup>

Immediate medical support is desperately needed in the Gaza Strip. Instances of preventable deaths and permanent disability have been recorded within Gaza due to a lack of fuel and necessary drugs and materials accessible by hospitals, as well as the denial of patients by Israeli authorities to receive necessary treatment outside the Strip.<sup>37</sup> It is imperative that the inhumane

<sup>32</sup> UN OCHA, Gaza Health Sector Still Struggling to Cope with 'Great March of Return' Injuries (20 June 2019), available at: <https://www.ochaopt.org/content/gaza-health-sector-still-struggling-cope-great-march-return-injuries>.

<sup>33</sup> 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. 122(b).

<sup>34</sup> *Ibid.* para. 122(c).

<sup>35</sup> *Ibid.* para. 122(d).

<sup>36</sup> *Ibid.* para. 122(a).

<sup>37</sup> *Ibid.* para 87; Al-Haq, Gaza: Dialysis Patients Face Death and Denial of Medical Transfer Causes Death, Violates Right to Life and Amounts to Inhuman, Cruel, Degrading Treatment (5 February 2018), available at: [http://www.alhaq.org/documentation/weekly-focuses/1182-gaza-dialysis-patients-face-death-and-denial-of-medical-transfer-causes-death-violates-right-to-life-and-amounts-to-inhuman-cruel-degrading-treatment-;](http://www.alhaq.org/documentation/weekly-focuses/1182-gaza-dialysis-patients-face-death-and-denial-of-medical-transfer-causes-death-violates-right-to-life-and-amounts-to-inhuman-cruel-degrading-treatment-) Al-Haq, Gaza: Uninhabitable (2019) available at: <https://www.youtube.com/watch?v=4p9oFy3O-KM>.



restrictions placed upon patients and hospitals in the Gaza Strip, including via the “dual use lists”, be immediately lifted to allow for necessary medical treatment.<sup>38</sup>

Further, it is necessary to stress the importance of the immediate cessation of Israel’s excessive use of force, including lethal force, against unarmed Palestinian protestors taking part in the weekly Great Return March demonstrations, which commenced on 30 March 2018. As of 5 October 2019, 213 Palestinians have been killed, including two journalists, four paramedics, seven persons with disabilities, and 46 children within the context of the Great Return March in the Gaza Strip.<sup>39</sup> Meanwhile, more than 34,000 have been injured, thousands as a result of the use of live ammunition, resulting in lifelong injuries and permanent disabilities.<sup>40</sup> This has naturally overwhelmed an already struggling health sector in the Gaza Strip,<sup>41</sup> with hospitals forced to redirect attention away from ordinary medical needs.<sup>42</sup>

The UN Commission of Inquiry concluded that Israel’s rules of engagement for the use of live fire are in apparent violation of international human rights law and called on Israel to revise its rules of engagement.<sup>43</sup> Yet, the Israeli occupying forces have continued to resort to excessive use of force during the ongoing Great Return March demonstrations.<sup>44</sup> It is of fundamental importance that the rights of the Palestinian people to freedom of expression and peaceful assembly, as well as the fundamental rights to life and health are respected, and that Israel refrain from the use of excessive force against unarmed civilians, who pose no threat to the lives of Israeli soldiers.

Accordingly, the UN Commission of Inquiry’s recommendations must be fulfilled by Israel, the occupying Power. Al-Haq calls on CESCRC to recognise that Gaza has become uninhabitable as a

<sup>38</sup> UN OCHA, ‘Gaza Health Sector Still Struggling to Cope with ‘Great March of Return’ Injuries’, 20 June 2019, available at: <https://www.ochaopt.org/content/gaza-health-sector-still-struggling-cope-great-march-return-injuries>

<sup>39</sup> Al-Haq Monitoring and Documentation Department, 5 October 2019.

<sup>40</sup> Letter from the State of Palestine to the Secretary-General, the President of the General Assembly, and the President of the Security Council A/ES-10/827-S/2019/717 (16 September 2019); for details see Human Rights Council, Report of the detailed findings of the independent international Commission of inquiry on the protests in the Occupied Palestinian Territory (18 March 2019) A/HRC/40/CRP.2.

<sup>41</sup> 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. 59.

<sup>42</sup> *Ibid.* para. 86.

<sup>43</sup> *Ibid.* para. 119.

<sup>44</sup> Al-Haq, Special Focus: Three Palestinians Killed during the Great Return March Protests (7 October 2019), available at: <http://www.alhaq.org/advocacy/15256.html>



result of Israel's prolonged closure and reiterate the recommendations by the UN Commission of Inquiry, in particular: for the Israeli-imposed closure to be lifted with immediate effect; realise the right of Palestinians to the highest attainable standard of physical and mental health; ensure accountability and effective remedies for Palestinian victims; and the call on Israel to comply with international human rights law in the resort to force and lethal force.

While the closure remains a root cause of systemic human rights violations in Gaza, interim measures of any kind will serve only to address the symptoms of the issue. The right to health, access to medical treatment, and the rights to life and dignity of Palestinians in Gaza cannot be upheld and fulfilled while the closure remains in place. In fact, the closure also undermines and violates the underlying determinants of health necessary for Palestinians' health and wellbeing in Gaza, and has resulted in the severe denial of Palestinians' rights to freedom of movement, adequate housing, an adequate standard of living, including adequate water and sanitation, amongst the full spectrum of social, economic, cultural, political, and civil rights denied to Palestinians in Gaza. Israel's imposed closure has also resulted in high levels of poverty, unemployment, aid-dependency, food insecurity, desperation, and mental health disorders, amongst others.

Al-Haq urges the Committee to call on Israel to lift the closure of the Gaza Strip and to ensure the adoption of immediate measures to grant Palestinians in Gaza access to and realisation of the rights guaranteed by the Covenant, including the right to the highest attainable standard of physical and mental health. In 2012, CERD called on Israel to "rescind its blockade policy and urgently allow all construction materials necessary for rebuilding homes and civilian infrastructures into the Gaza Strip so as to ensure respect for Palestinians' right to housing, education, health, water and sanitation."<sup>45</sup> CDESCR must call on Israel to adopt the recommendations made by the UN Commission of Inquiry on the realisation and protection of the right to health of all Palestinians, including Palestinians injured within the context of the Great Return March.

Finally, we call on CDESCR to further consider the recommendations on the right to health provided by the UN Special Rapporteur on the situation of human rights in the Palestinian Territory occupied since 1967, Mr. Michael Lynk, in his report to the UN Human Rights Council

<sup>45</sup> Committee on the Elimination of Racial Discrimination, Eightieth Session, Concluding Observations of the Committee on the Elimination of Racial Discrimination, 9 March 2012, CERD/C/ISR/CO/14-16, para. 26.



in June 2018, including to “[e]nsure the respect and protection of medical personnel and medical facilities” from unlawful attacks, to “[s]ubstantially improve prison conditions and the provision of adequate health care for Palestinian prisoners and detainees,” to “[t]ake meaningful steps to improve the many social determinants that influence health outcomes in the [OPT],” and to “[e]nsure regular and reliable access, at all times, for all Palestinian patients who require specialized health care outside of their jurisdictions.”<sup>46</sup>

## 5. Impact of fragmentation, movement and access restrictions on the right to health

The Committee asked about the realisation of the right to health, especially for Palestinian women and pregnant women in light of Israeli-imposed checkpoints.

The stopping and delays at Israeli military checkpoints has remained a pressing issue, particularly for reproductive and health rights of Palestinian women. Palestinian communities in the West Bank are divided through myriad checkpoints, the Annexation Wall, roadblocks, and settlements, which constitute significant barriers to the realisation of fundamental rights, including to healthcare. East Jerusalem is not accessible to Palestinians in the rest of the West Bank and in the Gaza Strip without Israeli-issued entry permits, including for patients in need of treatment in East Jerusalem’s hospitals.<sup>47</sup> According to a World Health Organization (WHO) report in May 2019:

“Access has been particularly problematic in recent years, with the patient permit approval rate declining from more than 90% in 2012 to reach an all-time low of 54% in 2017. The approval rate for 2018 is the second lowest recorded by WHO, with 61% of patient permit applications approved. For those injured during the “Great March of Return” in the Gaza Strip, the approval rate was much lower: of 435 permit applications, under a fifth (19%) were approved. Under half (48%) of patient companion permit applications from the Gaza Strip were approved in the same year. The majority of West Bank patients must also apply for permits to access east Jerusalem or Israeli hospitals, with the exemption of most women over 50 years of age, men over 55 years and younger children, provided they travel with an adult who has a valid permit. Data were not

<sup>46</sup> UN Human Rights Council, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 14 June 2018, UN Doc. A/HRC/37/75, para. 65.

<sup>47</sup> The Coalition of Women for Peace and Who Profits from the Occupation, ‘The gendered aspect of Israeli checkpoints in the OPT’ (2015) 4, available at: [https://whoprofits.org/wp-content/uploads/2018/06/old/mahsomim-english-web\\_final.pdf](https://whoprofits.org/wp-content/uploads/2018/06/old/mahsomim-english-web_final.pdf).



available disaggregated for patients and companion permits; the approval rate for these two groups combined was 82% in 2018.”<sup>48</sup>

While this fragmentation affects the entirety of the Palestinian people, it is of particular concern for patients, including women and pregnant women who have been stopped and delayed at checkpoints by the Israeli occupying forces, denying them access to medical and reproductive care. Due to access restrictions and delays at checkpoints, home-births for pregnant women have become progressively more common, as women fear that they may not be able to safely reach a hospital on time.<sup>49</sup> The threat of this happening is very real, with an estimated 69 Palestinian babies being born at checkpoints in the period between 2000 and 2007, with a further 35 babies, and five mothers having died at checkpoints during childbirth.<sup>50</sup> In 2009, it was estimated that some 2,500 births face difficulties on account of the fragmentation of the West Bank.<sup>51</sup>

This issue has become steadily worse since the erection of the Annexation Wall in 2002, which disrupted the access of hundreds of thousands of Palestinians to hospitals, doctors, specialists, and other forms of healthcare. This is of particular concern to women whose access to nearby hospitals is directly blocked by the Annexation Wall, such as around the Bethlehem area.<sup>52</sup>

Al-Haq recalls the landmark 2004 advisory opinion by the International Court of Justice on the construction of the Annexation Wall in the OPT, which found that the Annexation Wall and its associated regime violate the right of the Palestinian people to self-determination and must be dismantled.<sup>53</sup> Fifteen years since, the Annexation Wall remains standing as a testament to the failure of the international community to hold Israel to account for widespread and systematic

<sup>48</sup> World Health Organization, Health Conditions in the occupied Palestinian territory, including east Jerusalem, and in the occupied Syrian Golan, 1 May 2019, available at: [http://apps.who.int/gb/ebwha/pdf\\_files/WHA72/A72\\_33-en.pdf](http://apps.who.int/gb/ebwha/pdf_files/WHA72/A72_33-en.pdf).

<sup>49</sup> *Ibid.* 14-15.

<sup>50</sup> *Ibid.*

<sup>51</sup> Human Rights Council, *The issue of Palestinian pregnant women giving birth at Israeli checkpoints: report of the High Commissioner for Human Rights* (26 February 2009) A/HRC/10/35 at para. 16.

<sup>52</sup> These issues were noted while the construction of the Wall was ongoing, see NGO Alternative Report in Response to the ‘List of Issues and Questions with Regard to the Consideration of Periodic Reports’ (CEDAW/PSWG/2005/II/CRP.1/ADD.7) 17.

<sup>53</sup> Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, ICJ Reports 2004, p. 136, para. 122.





human rights violations committed against the Palestinian people.<sup>54</sup> Al-Haq calls on CESCR to emphasize and reiterate the findings of the International Court of Justice in its 2004 advisory opinion.

Palestinians, including women and girls, have a right to enjoy the highest attainable standard of physical and mental health in the OPT. Yet, the right to health has been severely obstructed as a result of Israel's policies and practices, including movement restrictions imposed by physical barriers, including the Annexation Wall, unlawful house demolitions and destruction of property, discriminatory planning and zoning, as well as other restrictions preventing access to healthcare, and the creation of coercive environments designed to drive Palestinian transfer.<sup>55</sup> To this end, we urge the Committee to issue concrete recommendations, calling on Israel to fulfil its human rights obligations towards the protected Palestinian people in the OPT, including to the highest attainable standard of physical and mental health, through the "removal of all barriers interfering with access to health services" amongst other matters, as per the Committee's General Comment No. 14 of 2000.<sup>56</sup>

Ultimately, the Committee must recognise that Israel's prolonged military occupation of the OPT and closure of the Gaza Strip remain major impediments to the progressive realisation of all economic, social, and cultural rights by Palestinians, in particular the realisation by the Palestinian people of their collective right to self-determination, as enshrined in Article 1 of the Covenant. We urge the Committee to call on Israel to end its 52-year occupation of the Palestinian territory and its 12-year closure of the Gaza Strip with immediate effect. We also urge the Committee to emphasize the right of return of Palestinian refugees to their homes and property, as mandated by international law and as part of the collective right of the Palestinian people to self-determination, including permanent sovereignty over natural wealth and resources.

<sup>54</sup> Al-Haq, 15 Years Since the ICJ Wall Opinion: Israel's Impunity Prevails Due to Third States' Failure to Act (9 July 2019), available at: <http://www.alhaq.org/advocacy/14616.html>.

<sup>55</sup> See Al-Haq, Unpacking Gender in Coercive Environments: The Case of the Jordan Valley (2018), available at: [http://www.alhaq.org/attached\\_uploads/download/alhaq\\_files/publications/UnpackingGenderinCoerciveEnvironmentTheCaseoftheJordanValley.pdf](http://www.alhaq.org/attached_uploads/download/alhaq_files/publications/UnpackingGenderinCoerciveEnvironmentTheCaseoftheJordanValley.pdf)

<sup>56</sup> UN CESCR, General Comment No 14, The Right to the Highest Attainable Standard of Health (Article 12 of the Covenant), 11 August 2000, UN Doc E/C.12/2000/4, para. 21.