



## Joint Urgent Appeal to the United Nations Special Procedures on the Denial of Access to Healthcare for Palestinian Patients from the Gaza Strip

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### Submitted by:

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### For the attention of:

- The Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967, Mr S. Michael Lynk;
- The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Mr Dainius Pūras;
- The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or Punishment, Mr Nils Melzer; and
- The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Ms E. Tendayi Achiume.

### 1. Overview

June 2020 marks 13 years since the start of Israel's illegal closure of the occupied Gaza Strip.<sup>1</sup> The closure, which amounts to unlawful collective punishment over two million Palestinians, has undermined all aspects of life in Gaza and deprives the Palestinian people of the enjoyment of the full spectrum of their inalienable rights, comprising their right to self-determination, including the right of

<sup>1</sup> Recent materials on the Gaza closure were compiled by Al-Haq, Al Mezan Centre for Human Rights, the Palestinian Centre for Human Rights (PCHR), and Medical Aid for Palestinians in a blog that marks 13 years of illegal Israeli closure. The blog, part of the Gaza2020 campaign, calls for the immediate lifting of the Gaza closure: <https://medium.com/@lifttheclosure/its-2020-lift-the-gaza-closure-c3f586611c11>. The blog also contains a page on health and healthcare in Gaza: <https://medium.com/@lifttheclosure/health-and-healthcare-in-gaza-ba6c28405b76>.

return of Palestinians to their homes, lands, and property from which they were forcibly uprooted and dispossessed since the Nakba of 1948.

Israel's illegal closure has driven Gaza's healthcare system to the brink of collapse, with the unavailability of essential medicines, supplies, and equipment, thereby contributing to the de-development of Palestinian healthcare. As such, for many Palestinian patients, treatment is only available outside of the Gaza Strip, subject to severe movement restrictions and a complex permit regime imposed by the Israeli occupying authorities, violating Palestinians' right to the highest attainable standard of health, and in the most extreme cases, their right to life.

This joint urgent appeal to the United Nations (UN) Special Procedures highlights the denial of access to healthcare for Palestinian patients from the Gaza Strip, and the cruel and inhuman conditions imposed on both patients and their companions when seeking treatment outside the Gaza Strip. The urgent appeal highlights the cases of two Palestinian infants who died over the past week after being denied access to the treatment they needed, and details the cases of Palestinian patients who are currently denied access to treatment. Accordingly, the appeal requests the intervention of UN human rights experts in urging the fulfilment of their right to health.

The current situation is a desperate one for Gaza patients, who face no avenue to access health services needed outside the Gaza Strip. Israel's permit system, an integral part of the illegal closure of Gaza, is an arbitrary and unnecessary measure that unlawfully preconditions urgent and lifesaving care for thousands of Palestinians. On 19 May 2020, in response to impending Israeli annexation of large parts of the occupied West Bank, the State of Palestine declared that it was absolved of all agreements with Israel, the Occupying Power, including security agreements.<sup>2</sup>

The Palestinian Ministry of Health continues to issue referrals for patients to facilities outside of Gaza and for West Bank patients to East Jerusalem, but these patients are required by Israeli occupying authorities to apply for permits and they currently have no official means to do so. All referral patients have been identified by medical practitioners and the Palestinian Ministry of Health as having an essential need for treatment that is otherwise unavailable in Gaza. A significant proportion of patients are referred on an urgent or lifesaving basis. In 2019, the Palestinian Ministry of Health issued 31,859 referrals for Gaza patients, 70 per cent of which required Israeli-issued permits to access their referral destinations. Major reasons for referrals requiring permits from Gaza include lack of essential medicines, radiotherapy facilities, nuclear medicine scanning technology, specialist diagnostic equipment, specialist surgical techniques, and specialist medical practitioners.

The current health crisis facing Gaza's patients pre-dates the State of Palestine's cessation of coordination with the Israeli occupation. Instead, it lies in Israel's maintenance of its arbitrary permit system as part of the illegal closure. Preconditioning healthcare on Israeli-issued permits is an unnecessary barrier that has long violated the right to health of Palestinians. Following the cessation

<sup>2</sup> Wafa, "President Abbas declares end to agreements with Israel, US; turns over responsibility on occupied lands to Israel," 19 May 2020, available at: <http://english.wafa.ps/page.aspx?id=1s724Ua117154132029a1s724U>.

of coordination and given the current deadlock in the system, it is incumbent upon the Israeli occupying authorities to provide a safe and expeditious alternative to the permit system—one that fulfils the fundamental rights of Palestinian patients and lives up to international standards concerning the right to health under occupation.

## **2. The death of nine-day-old infant Anwar Muhammad Harb**

Anwar Muhammad Harb, a Palestinian infant, was born on 13 June 2020 with heart disease and was assisted, since birth, by an artificial ventilator. On 21 June 2020, Anwar received a referral from the Palestinian Ministry of Health to receive treatment at Al-Makassed Hospital in occupied East Jerusalem and was supposed to be taken to hospital by ambulance the next day. Anwar's medical documents were sent to Israeli occupying authorities at Beit Hanoun (Erez) checkpoint, who agreed to allow Anwar to leave Gaza to receive treatment in Jerusalem.

On 22 June 2020, at approximately 12:15pm, Israeli occupying authorities approved the request by Anwar's family. On that basis, Al-Makassed Hospital attempted to contact the Palestinian Authority health coordinator in the Gaza Strip so that an ambulance could transfer the infant from the hospital in Gaza to Beit Hanoun checkpoint, and then from the checkpoint to Al-Makassed Hospital. At 4:15pm that same day, Anwar's father informed Al-Makassed Hospital that his son had passed away. Urgent efforts are needed to protect the fundamental rights of Palestinian patients, in particular in the Gaza Strip.<sup>3</sup>

## **3. The death of eight-month-old infant Omar Ahmad Yaghi**

Omar Ahmad Yaghi, an eight-month-old infant from the Gaza Strip, was born on 9 October 2019. Doctors at Al-Nasr Hospital in Gaza City discovered that he suffered from congenital coronary arteries anomalies and cardiac valve anomaly. When Omar was diagnosed, he was admitted to the intensive care unit at Al-Nasr Hospital, where he stayed for ten days. While he was still in the intensive care unit, a non-profit organisation contacted Omar's family to assist in getting him the needed treatment in Israeli hospitals.

As such, Omar's family were able to obtain an approval for his treatment in Sheba Medical Center and reserved an appointment for 25 October 2019. After obtaining the needed permits from Israeli occupying authorities, Omar reached his appointment accompanied by his grandmother Sabah Muhammad Yaghi, 55. Omar underwent medical examinations at Sheba Medical Center, received treatment, and stayed in hospital for about 11 days before returning to the Gaza Strip.

Omar's doctors at Sheba Medical Center decided that he needed follow up checks every 30 days. After approximately 40 days had passed, Omar was able to reach Sheba Medical Center, once again accompanied by his grandmother Sabah, where he underwent other medical examinations, stayed for three days and returned to the Gaza Strip. On 4 March 2020, Omar was again taken to Sheba Medical

<sup>3</sup> See PCHR, "Child Dies Due to Travel Restrictions, PCHR Calls for Travel Mechanism for Gaza Strip Patients for Treatment Abroad," 23 June 2020, available at: <https://www.pchrgaza.org/en/?p=14693>.

Center, this time accompanied by his grandmother Linda Fouad Al-Na'azei, 46. On that occasion, he underwent cardiac catheterization of coronary arteries, stayed in hospital for about five days, and then returned to the Gaza Strip.

Then, Omar's doctors decided that he urgently needed heart surgery, which should have been performed at his next visit. As such, Omar's family scheduled an appointment for 8 April 2020 for Omar to undergo surgery. However, Omar was unable to obtain the permit from Israeli occupying authorities. Accordingly, Omar's family scheduled another appointment for 24 May 2020, which Omar and his family were forced to miss again as they had no means to apply for a permit.

A third appointment was scheduled for 21 June 2020 to undergo the needed treatment. According to Omar's father, Omar's health condition deteriorated and his family brought him, on multiple occasions, to Al-Rantisi Hospital in Gaza City. Seeing his son's health further deteriorating, Omar's father contacted Physicians for Human Rights Israel for assistance to obtain the needed permit from Israeli occupying authorities.

On 18 June 2020, at approximately 1:30am, Omar's health condition gravely deteriorated. Omar's father immediately took his son in a private car to Al-Rantisi Hospital in Gaza. On their way there, Omar's father felt that Omar was suffocating, so he had to take him to Jerusalem Hospital in Tel Al-Hawa neighbourhood in Gaza City, which was closer. There, doctors provided Omar with first aid and conducted medical examinations. Later, he was transferred to Al-Rantisi Hospital, where he was admitted to the intensive care unit. At around 10:30am on 18 June, Omar's death was pronounced.<sup>4</sup>

#### **4. The case of 36-year-old Muhammad Salim Al-Dayah**

Muhammad Salim Al-Dayah is a 36-year-old father of five. He has four daughters and a son, and works with the Palestinian Authority in Gaza as a police officer. Muhammad was diagnosed with an aggressive brain tumour in February 2020.

After initial investigations, Muhammad was recommended urgent surgery to remove the tumour, which he underwent at Al-Shifa Hospital in Gaza City, where he remained postoperatively until 22 February 2020. The histopathology results showed that the tumour in Muhammad's brain was highly malignant, a grade IV glioblastoma. Muhammad received follow up care at the specialist oncology department of Al-Rantisi Hospital in Gaza City. The oncologists there immediately referred Muhammad for adjuvant radiotherapy and chemotherapy at Augusta Victoria Hospital in occupied East Jerusalem, in line with the standard treatment protocol for this tumour and due to the unavailability of radiotherapy facilities in the Gaza Strip. According to expert medical opinion, timely access to radiotherapy is essential to improve patient survival outcomes.

<sup>4</sup> Al-Haq Affidavit No. 154A/2020, given by Ahmad Jihad Yaghi, 34, Omar's father and a resident of Al-Zahra in the Gaza governorate, on 23 June 2020. *See also* Al Mezan, "Press Release: A child patient dies in Gaza after his family was unable to secure an exit permit," 23 June 2020, available at: <http://mezan.org/en/post/23761>.

Accordingly, Muhammad's first radiotherapy appointment at Augusta Victoria Hospital in occupied East Jerusalem was scheduled for 12 March 2020. Muhammad applied for a permit from Israeli occupying authorities to allow him to travel to East Jerusalem through Beit Hanoun (Erez) checkpoint. However, Israeli occupying authorities denied Muhammad's permit application without providing any reason. Following the first permit refusal, Muhammad's family received another referral, including financial coverage from the Palestinian Ministry of Health. As such, Muhammad's family applied for a second permit for treatment at Augusta Victoria Hospital and received a second refusal on 17 March 2020. By then, Muhammad's health condition had considerably deteriorated. He was still at Al-Rantisi Hospital in Gaza, where his weakness had worsened to the extent that he had almost complete lack of movement in his left arm and left leg. Muhammad developed a deep vein thrombosis and required heparin treatment, which was an additional cost for his family.

Once again, Muhammad's family applied for a third permit application with Israeli occupying authorities for an appointment at Augusta Victoria Hospital on 20 April 2020. Faced with a denied permit application, Muhammad was forced to miss his appointment. Similarly, on 22 April 2020, Muhammad's family applied for a fourth permit application with Israeli occupying authorities for an appointment at Augusta Victoria Hospital on 4 May 2020. Muhammad was forced to miss his scheduled appointment as he received no response from Israeli occupying authorities by the date of his appointment.

Following the denial and delay of Muhammad's permit application, Muhammad's doctors wrote a referral report which specifies that Muhammad urgently needs radiotherapy, which is unavailable in the Gaza Strip. Persistently, doctors urged Muhammad's referral and stated that "the patient needs urgent referral to save his life." On 13 May 2020, Muhammad's family submitted yet another permit application requesting to enter occupied East Jerusalem on 19 May 2020.<sup>5</sup> Then, Muhammad went through the long process once again as he submitted his sixth permit application requesting to enter occupied East Jerusalem on 7 June 2020, which was later denied.

Prior to the appeal on his behalf through the Israeli court system, all of Muhammad's permit applications for treatment in East Jerusalem were denied by Israeli occupying authorities, except for one for an appointment on 4 May 2020, where he received no response by his appointment date, according to the World Health Organization (WHO).<sup>6</sup>

On 11 June 2020, an appeal by the Palestinian Centre for Human Rights (PCHR) on Muhammed's behalf was upheld by Israeli courts and he was granted a permit to travel out of Gaza. Initially, Muhammad's companion was denied a permit, which prevented Muhammed to travel, as he was severely debilitated and unable to travel alone. By 12 June 2020, however, both Muhammad and his

<sup>5</sup> Al-Haq Affidavit, given by Muhammad's brother, Mahmoud Salim Al-Dayah, 34, a resident of Al-Zaytoun neighbourhood in Gaza City, on 22 May 2020.

<sup>6</sup> See WHO, "Patients in the Gaza Strip unable to obtain Israeli-issued permits to access the healthcare," available at: <http://www.emro.who.int/pse/palestine-infocus/patients-in-the-gaza-strip-unable-to-obtain-israeli-issued-permits-to-access-the-healthcare.html>.

companion, his mother, received a permit, and they left Gaza to Augusta Victoria Hospital on 14 June 2020.

Denial and delay of permits presents a major barrier to access for patients, with permit decisions arbitrary and the complex bureaucratic process causing significant anxiety and stress for patients and their families. The impact of permit delays and denials on health outcomes is grave. A WHO study has demonstrated that cancer patients from Gaza initially delayed or denied permits to access chemotherapy and/or radiotherapy treatment between 2015 and 2017 were 1.5 times less likely to survive than those initially approved, accounting for baseline differences. Individual cases also demonstrate the profound effect that permit restrictions have on the course of a patient's treatment pathways.

## **5. The case of 23-year-old Abdullah Muhammad Al-Sharif**

Abdullah Muhammad Al-Sharif is a 23-year-old resident of Al-Karama area in the North Gaza governorate. He is a fourth-year student in health management at Al-Quds Open University. In September 2019, Abdullah was diagnosed with Non-Hodgkin lymphoma. Since this time, he received chemotherapy in the Gaza Strip to treat his condition. However, Abdullah needed referral to Augusta Victoria Hospital in occupied East Jerusalem to receive a PET scan to reveal his response to chemotherapy and the extent of cancer spread in his body. Given the lack of availability of PET scans in the Gaza Strip, Abdullah required an Israeli-issued permit to access this essential healthcare.

On 19 November 2019, Abdullah received financial coverage and obtained a medical referral from the Palestinian Ministry of Health to undergo a PET scan and continue his treatment at Augusta Victoria Hospital in East Jerusalem. His first permit application was for an appointment on 10 February 2020. However, he was instructed by the Israeli occupying authorities to reapply with an updated medical report. His application was not approved by the date of his appointment, delaying his access to healthcare.

On 23 February 2020, Abdullah again received financial coverage and obtained a medical referral from the Palestinian Ministry of Health to receive a PET scan at Augusta Victoria Hospital in East Jerusalem, because the needed treatment is unavailable in the Gaza Strip. Once the referral was approved, Abdullah applied for a travel permit from Israeli occupying authorities through the Gaza Health Coordination Office, to allow him to leave the Gaza Strip through Beit Hanoun (Erez) checkpoint to reach the hospital. His appointment was scheduled for 20 April 2020. Abdullah's permit application was this time denied by Israeli occupying authorities without any reasons, despite the fact that he had obtained the requested updated report.

Over time, Abdullah's pain increased and he continued to receive chemotherapy treatment at Hayat Hospital in Gaza City. His doctors continued to stress the need for Abdullah to reach Augusta Victoria Hospital, since a PET scan is required to determine his progress and to plan his future treatment. Abdullah received a further medical referral for a PET scan on 15 April 2020, with financial coverage from the Palestinian Ministry of Health.

Abdullah told Al-Haq that he fears the cancer will continue to spread in his body and stressed that his life depends on continuing his treatment in East Jerusalem. He added that his doctor in Gaza is unsure as to how well he is responding to chemotherapy and has continued to urgently recommend that Abdullah undergo a PET scan to determine a specific treatment protocol. Abdullah continues to be denied access to occupied East Jerusalem for treatment he urgently needs.<sup>7</sup>

## **6. The case of 52-year-old Azmi Salim Abu Amra**

Azmi Salim Abu Amra is a 54-year-old resident of Deir Al-Balah in the Gaza Strip. Azmi is a father of 11 and used to work as a labourer. In mid-March 2020, Azmi started complaining to his family about back pain and pain in the right side of his waist. On 18 May 2020, Azmi went to Al-Aqsa Martyrs Hospital in Deir Al-Balah for medical checks and was admitted with pain and jaundice. Insisted by the doctors, Azmi stayed in the hospital to undergo all the needed medical examinations. After staying there for about five days, the doctors transferred Azmi to the Gaza European Hospital in Khan Younis, where he underwent further medical examinations and magnetic resonance images.

From there, he was referred to Al-Shifa Hospital, where medical tests confirmed suspicions that his symptoms were caused by a cancer of the bile duct called a cholangiocarcinoma. Azmi had an initial intervention to insert a stent to open the common bile duct, which had been obstructed by the tumour, according to WHO. Azmi's doctors at Al-Shifa Hospital needed to understand the extent of spread of the tumour, in order to plan for the most effective treatment course. Azmi was referred for treatment at Al-Makassed Hospital in occupied East Jerusalem, where he received an appointment for 15 June 2020. He received financial coverage and obtained a medical referral from the Palestinian Ministry of Health to continue his treatment at Al-Makassed.

Accordingly, Azmi's family approached the Palestinian Liaison Office to obtain a permit from Israeli occupying authorities to allow him to cross Beit Hanoun (Erez) checkpoint, in the northern Gaza Strip, to reach Jerusalem for treatment. Azmi's family were then informed of the Palestinian Authority's cessation of coordination with the Israeli occupying authorities, following the latter's decision to illegally annex large parts of the occupied West Bank. As such, Azmi was forced to miss his first scheduled appointment at Al-Makassed Hospital. After missing his first appointment, his family requested another referral and Azmi received an appointment for 22 June 2020, which he was forced to miss because he was unable to apply for a permit due to the cessation of coordination.

Azmi's family decided not to inform him that he has been diagnosed with cancer so as not to contribute to a deterioration in his health condition. According to Azmi's son, Alaa, 27, Azmi's health condition continues to worsen as times passes and he now faces movement difficulties.<sup>8</sup> Alaa commented to WHO: "We went to the Coordination Office to apply for my father, but I was told they stopped contact with Israeli authorities. Then we went to the Palestinian Centre for Human

<sup>7</sup> Al-Haq Affidavit No. 111A/2020, given by Abdullah Muhammad Al-Sharif, 23, a resident of Al-Karama in the North Gaza governorate, on 27 May 2020.

<sup>8</sup> Al-Haq Affidavit No. 153A/2020, given by Alaa Azmi Abu Amra, 27, Azmi's son and a resident of Deir Al-Balah in the Central Gaza governorate, on 23 June 2020.

Rights, but they told me that they cannot help as well. We have an appointment for the 22<sup>nd</sup>, but we are trapped and there is no way for us to exit.”<sup>9</sup>

## **7. The case of 25-year-old Waseem Jihad Al-Khaldi**

Waseem Jihad Al-Khaldi is a 25-year-old Palestinian from Beit Lahia in the northern Gaza Strip. Waseem was born with a congenital heart problem, which caused the narrowing of one of his heart valves (a pulmonary valve stenosis). When he was seven years old, he underwent multiple treatments, including a procedure to open the valve (balloon dilatation) and subsequently open-heart surgery by an Italian medical team who came to the Gaza Strip. The surgery was effective at that time, and Waseem lived with a stable heart for about 13 years. He finished school and went on to graduate from Al-Azhar University in business administration in 2018.

In 2016, Waseem’s health condition deteriorated. He consulted a cardiologist in the Gaza Strip who recommended urgent surgery to replace the mitral valve due to damage to the valve. His doctor, who also recommended that Waseem consult another cardiologist, conducted further medical examinations, which confirmed that Waseem urgently needed surgery, which cannot be performed in Gaza because of the Strip’s poor medical and surgical capabilities. Doctors therefore submitted an urgent referral for Waseem to replace the mitral valve at Al-Makassed Hospital in occupied East Jerusalem.

In mid-2016, Waseem received financial coverage and obtained a medical referral from the Palestinian Ministry of Health to continue his treatment at Al-Makassed Hospital in occupied East Jerusalem. Then, he applied through the Palestinian Liaison Office for a permit from Israeli occupying authorities. However, Israeli authorities denied Waseem’s permit application without providing any reason.

Over time, Waseem’s health condition deteriorated. As he regularly followed up with his doctors, he was able to obtain another medical referral almost one month and a half after his permit application was rejected. After scheduling a new appointment with Al-Makassed Hospital, he applied for another permit. The Palestinian Liaison Office informed Waseem that the Israeli intelligence summoned him for interrogation at Beit Hanoun (Erez) checkpoint, where arrived at 8:00am and was kept waiting until 7:00pm, despite his health condition. After the interrogation, Israeli occupying authorities approved Waseem’s permit application to reach Al-Makassed.

Accordingly, in July 2016, Waseem, accompanied by his aunt Laila Al-Khaldi, 65, left the Gaza Strip for Al-Makassed Hospital in East Jerusalem, where Waseem underwent multiple medical examinations that confirmed that he was living with a valve with 40 per cent deficiency. Doctors decided that Waseem needed surgery to change the damaged part of the mitral valve, which was set for six months

<sup>9</sup> WHO, “Patients in the Gaza Strip unable to obtain Israeli-issued permits to access the healthcare,” available at: <http://www.emro.who.int/pse/palestine-infocus/patients-in-the-gaza-strip-unable-to-obtain-israeli-issued-permits-to-access-the-healthcare.html>

later. Waseem also underwent medical treatments for two weeks to stabilize the valve condition before surgery. When the two weeks had passed, Waseem and his aunt came back to the Gaza Strip.

Upon his return, Waseem's health condition did not improve. He severely suffered from heart and breathing problems for about six months. Pending the date of the surgery to change the damaged part of the valve in East Jerusalem, Waseem continued to receive treatment in hospitals in Gaza.

In February 2017, Waseem obtained an urgent referral for treatment at Al-Makassed Hospital, as he had an appointment from the hospital to undergo surgery. He applied for a permit from Israeli occupying authorities. Similar to what happened the previous time he had applied, Waseem was summoned by the Israeli intelligence for interrogation. He was left to wait for almost ten hours before the interrogation. He was then presented to an Israeli cardiologist who, after examining Waseem and reading his medical files, confirmed that Waseem urgently needed surgery and that his life depended on it. Yet, Israeli occupying authorities still denied Waseem's permit application.

Waseem's father attempted to transfer his son to Egyptian hospitals, hoping he could undergo surgery there. However, due to travel restrictions at Rafah crossing and the difficulty in obtaining a medical transfer, Waseem was unable to travel to Egypt to complete his treatment.

In February 2018, Waseem's father approached the Palestinian Ministry of Health, urging them to submit an urgent medical referral for his son's treatment at Al-Makassed Hospital. Finally, Israeli occupying authorities granted Waseem a three-month permit for surgery at Al-Makassed. In April 2018, Waseem left the Gaza Strip for Al-Makassed, where he underwent surgery and stayed for 45 days.

Upon his return, Waseem felt general tiredness, had fevers, and faced breathing difficulties. He was taken to Al-Shifa Hospital, where he remained for about six weeks in the cardiology department as the doctors treated the complications of his surgery and his heart infection (infective endocarditis). When his condition stabilized, Waseem was referred to Al-Makassed Hospital in June 2018. He attended several follow up assessments at Al-Makassed during the validity period of his three-month permit.

In mid-March 2020, however, Waseem's health condition deteriorated. His high fevers, heart pain, and shortness of breath exacerbated. Waseem was admitted to Al-Shifa Hospital in Gaza for almost 25 days with infection of his heart again. His cardiologist confirmed that treatment is unavailable for him in the Gaza Strip and that Waseem is in need of a second open heart surgery to replace the pulmonary valve. Waseem's doctors referred him to Al-Makassed Hospital, but he was forced to miss his appointment scheduled for 15 June 2020, as he was unable to apply for a permit.<sup>10</sup> Waseem has

<sup>10</sup> Al-Haq Affidavit No. 155A/2020, given by Waseem Jihad Al-Khalidi, 25, a resident of Beit Lahia in the northern Gaza Strip, on 23 June 2020.

discharged himself from Al-Shifa Hospital. He told WHO: “I’m tired of hospitals. I need to be in a calm environment and the doctors have agreed that I can receive antibiotics at home for now.”<sup>11</sup>

## **8. Legal analysis**

Israel’s prolonged occupation and closure undermine every aspect of life for Palestinians in Gaza, not least their right to the highest attainable standard of physical and mental health. The closure has a devastating effect on economic determinants of health, leading to deep poverty and some of the highest rates of unemployment in the world, as well as civil and political health determinants, that are eviscerated by Israel’s pervasive impunity and the absence of international justice and accountability for widespread and systematic human rights violations, including war crimes and crimes against humanity, committed against the Palestinian people.<sup>12</sup> Access to essential healthcare as well as enjoyment of the underlying determinants of health are core attributes of the right to the highest attainable standard of physical and mental health under international human rights law.<sup>13</sup> Israel’s restrictions on freedom of movement between different parts of the occupied Palestinian territory, the fragmentation of the Palestinian people and of Palestinian healthcare, and the implementation of an arbitrary permit regime for patient travel, have profound repercussions for access to essential healthcare,<sup>14</sup> leading to violations of the right to health and dignity. The denial of access to healthcare may further amount to prohibited ill-treatment and, in the most extreme cases, lead to arbitrary deprivation of life.<sup>15</sup>

### *8.1. The Illegality of Israel’s Prolonged Closure of the Gaza Strip*

For 13 years, Israel, the Occupying Power, has imposed a comprehensive land, sea, and air blockade and closure on the occupied Gaza Strip, imposing unlawful collective punishment over two million Palestinians. Under international humanitarian law, the Gaza closure violates Article 33 of the Fourth Geneva Convention of 1949, which enshrines that “No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited.”<sup>16</sup> Further, Article 50 of the Hague Regulations of 1907, which are constitute of customary international humanitarian law, provides that “No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals

<sup>11</sup> WHO, “Patients in the Gaza Strip unable to obtain Israeli-issued permits to access the healthcare,” available at: <http://www.emro.who.int/pse/palestine-infocus/patients-in-the-gaza-strip-unable-to-obtain-israeli-issued-permits-to-access-the-healthcare.html>.

<sup>12</sup> See, e.g., OHCHR, “No Justification for Israel to Shoot Protesters with Live Ammunition,” 28 February 2019, available at: <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=24226&LangID=E>.

<sup>13</sup> CESCR, General Comment No. 14: The Right to the Highest Attainable, Standard of Health (Art. 12), 11 August 2000, UN Doc. E/C.12/2000/4.

<sup>14</sup> World Health Assembly, Health conditions in the occupied Palestinian territory, including east Jerusalem, and in the occupied Syrian Golan, 1 May 2019, UN Doc. A72/33.

<sup>15</sup> See, for example, 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/monitoring-documentation/6276.html>.

<sup>16</sup> *Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (adopted 12 August 1949, entry into force 21 October 1951) 75 UNTS 287 (Fourth Geneva Convention), Article 33.

for which they cannot be regarded as jointly and severally responsible.”<sup>17</sup> In 2013, the UN Secretary-General considered that “the blockade and related restrictions [on Gaza] target and impose hardship on the civilian population, effectively penalizing them for acts they have not committed,” therefore amounting to unlawful collective punishment.<sup>18</sup> Israel’s closure also violates international human rights law. It contributes to the strategic fragmentation of the Palestinian people as part of Israel’s apartheid regime,<sup>19</sup> deprives the Palestinian people of their means of subsistence, as part of their collective right to self-determination,<sup>20</sup> and violates the full spectrum of rights owed to the Palestinian people in Gaza.<sup>21</sup> Under international criminal law, Palestinian human rights organisations have argued that the closure amounts to the crime of persecution,<sup>22</sup> giving rise to individual criminal responsibility under the Rome Statute of the International Criminal Court.<sup>23</sup>

In February 2019, the UN Commission of Inquiry on the 2018 protests in the occupied Palestinian territory recommended that Israel “Lift the blockade on Gaza with immediate effect.”<sup>24</sup> On 22 March 2019, Member States of the UN Human Rights Council adopted the Commission of Inquiry’s recommendations and committed to pursuing their implementation, as mandated by Human Rights Council resolution 40/13.<sup>25</sup> In November 2019, the UN Committee on Economic, Social and Cultural Rights (CESCR) urged Israel to “immediately lift the blockade on and the closures affecting the Gaza Strip and provide unrestricted access for the provision of urgent humanitarian assistance.”<sup>26</sup> Similarly, in December 2019, the UN Committee on the Elimination of Racial Discrimination (CERD) called on Israel to “review its blockade policy and urgently allow and facilitate the rebuilding of homes and civilian infrastructures, ensure access to necessary urgent humanitarian assistance as well as to the right to freedom of movement, housing, education, health, water and sanitation.”<sup>27</sup>

<sup>17</sup> *Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land*, 18 October 1907, Article 50.

<sup>18</sup> Human Rights Council, Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, Report by the Secretary-General, 22 August 2013, UN Doc. A/HRC/24/30, para. 22.

<sup>19</sup> 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>.

<sup>20</sup> *International Covenant on Civil and Political Rights* (adopted 16 December 1966, entry into force 23 March 1976) 999 UNTS 171 (ICCPR) and *International Covenant on Economic, Social and Cultural Rights* (adopted 16 December 1966, entry into force 3 January 1976) 993 UNTS 3 (ICESCR), Article 1.

<sup>21</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>22</sup> *Rome Statute of the International Criminal Court* (adopted 17 July 1998, entry into force 1 July 2002) 2187 UNTS 3 (Rome Statute), Article 7(1)(h).

<sup>23</sup> See Al Mezan, “Palestinian Human Rights Organizations & Victims’ Communication to the ICC on the Illegal Closure of the Gaza Strip,” 23 November 2016, <http://www.mezan.org/en/post/21630>.

<sup>24</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 (hereinafter ‘A/HRC/40/74’), para. 122(a).

<sup>25</sup> Human Rights Council, Resolution 40/13, 22 March 2019, UN Doc. A/HRC/RES/40/13, para. 2.

<sup>26</sup> CESCR, Concluding observations on the fourth periodic report of Israel, 12 November 2019, UN Doc. E/C.12/ISR/CO/4, para. 11(a).

<sup>27</sup> CERD, Concluding observations on the combined seventeenth to nineteenth reports of Israel, 12 December 2019, UN Doc. CERD/C/ISR/CO/17-19, para. 45.

Since 2007, Israel's closure has undermined all aspects of life in Gaza, denying Palestinians the enjoyment of all rights and freedoms without discrimination.<sup>28</sup> The Palestinian people in Gaza now face profound levels of poverty, aid-dependency, food insecurity, and unemployment, as well as the collapse of essential services, including healthcare.<sup>29</sup> Since 2012, UN reports have repeatedly warned that the Gaza Strip will become uninhabitable by 2020 should Israel fail to lift the closure.<sup>30</sup>

## 8.2. *Systematic Denial of Access to Healthcare*

Israel's illegal closure has resulted in the fragmentation and de-development of Gaza's healthcare system due to restrictions imposed on the movement of people and goods. This has created a need for Palestinian patients to be referred for more advanced facilities outside Gaza to access healthcare. Yet, preconditioning care on Israeli-issued permits is an unnecessary barrier that has long violated the rights of Palestinian patients seeking lifesaving treatment. Israel's arbitrary permit system is an integral part of the illegal closure regime, both of which must ultimately be dismantled. In addition, over the years, Israeli occupying authorities have exploited the very need for treatment of Palestinian patients in Gaza, pressuring patients and their companions to collaborate with Israeli occupying authorities in exchange for treatment.<sup>31</sup> As such, Palestinians' very need for treatment has been exploited by Israeli occupying authorities as a method of subjugation and control to maintain Israel's regime of systematic racial oppression and domination over the Palestinian people, which amounts to the crime of apartheid.<sup>32</sup>

The right to health is amongst the most basic human rights applicable to all without exception. Enshrined in Article 25 of the Universal Declaration of Human Rights, the right to health forms part of the right to an adequate standard of living.<sup>33</sup> Article 12(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) enshrines "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."<sup>34</sup> The fulfilment of the right to health is closely linked to the realisation of other rights, including to food, adequate housing, work, education, human dignity, life, privacy, access to information, and the freedoms of association, assembly, and movement, as well as the prohibition against torture, and the principles of equality and non-discrimination.<sup>35</sup> Palestinians in Gaza are systematically deprived of these underlying determinants, which are necessary for good health and well-being. As recognised by WHO, "The underlying

<sup>28</sup> Al-Haq, "Rights Groups Call on UN Human Rights Council to Lift Illegal Closure of Gaza as Collective Punishment," 7 June 2020, available at: <http://www.alhaq.org/advocacy/16951.html>.

<sup>29</sup> UN Country Team in the occupied Palestinian territory, "Gaza Ten Years Later," July 2017, [https://unsco.unmissions.org/sites/default/files/gaza\\_10\\_years\\_later\\_-\\_11\\_july\\_2017.pdf](https://unsco.unmissions.org/sites/default/files/gaza_10_years_later_-_11_july_2017.pdf).

<sup>30</sup> See, e.g., UNCTAD, Report on UNCTAD assistance to the Palestinian people: Developments in the economy of the Occupied Palestinian Territory, 6 July 2015, UN Doc. TD/B/62/3, para.

<sup>31</sup> Al-Haq, "Al-Haq Statement on World Health Day," 7 April 2017, available at: <http://www.alhaq.org/advocacy/6342.html>.

<sup>32</sup> 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>.

<sup>33</sup> UN General Assembly, *Universal Declaration of Human Rights*, Resolution 217 A (III), 10 December 1948, UN Doc. A/RES/217 A (III), Article 25.

<sup>34</sup> Article 12(1), ICESCR.

<sup>35</sup> CESCR, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), 11 August 2000, UN Doc. E/C.12/2000/4, 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](http://www.emro.who.int/images/stories/palestine/documents/who_right_to_health_2018_web-final.pdf?ua=1).

conditions of life needed for enjoyment of good health and wellbeing by Palestinians are... detrimentally affected by the situation of ongoing [Israeli] military occupation.”<sup>36</sup>

### *8.3. Urgent need to ensure patient access from Gaza*

In 2017, 54 patients, 46 of whom had cancer, are known to have died after their Israeli-issued permits to access healthcare out of Gaza were denied or delayed.<sup>37</sup> As highlighted in 2018 by the UN Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967, Mr Michael Lynk, “Israel has been in profound breach of its responsibility with respect to the right to health in the Occupied Palestinian Territory.”<sup>38</sup>

On 19 May 2020, the Palestinian Authority announced an end to its coordination with Israeli occupying authorities, which affected the coordination of permits for patients and their companions. In the West Bank, patients have been able to apply for permits directly to the Israeli District Coordination, though there is no current oversight of this process or system to support appeals on behalf of patients and companions denied or delayed permits. In the Gaza Strip, PCHR initially intervened to assist patients in dire need, but withdrew from this function on 9 June 2020 after having been smeared in Israeli media as operating an official alternative to the Palestinian Authority mechanism for the coordination of permits with Israeli occupying authorities. PCHR categorically rejected the allegation and held “the Israeli occupation fully responsible for the lives of Palestinian patients in the Gaza Strip who are in dire need for medical treatment... [and] access to basic medical services that are unavailable in the Gaza Strip.”<sup>39</sup>

Currently, Augusta Victoria Hospital in occupied East Jerusalem is coordinating a small number of permits on behalf of its patients, otherwise most patients in need of permits are currently unable to apply. In the context of the COVID-19 outbreak, the full impact of the withdrawal of coordination of permits for patients and companions has not been fully realised due to quarantine measures and the reluctance of patients to travel out of Gaza and potential risk to their health if they do. In April and May 2020, the number of patient permit applications had dropped more than 90 per cent compared to pre-COVID-19 monthly figures.<sup>40</sup>

In absence of any formal avenue for Palestinians to receive treatment outside of Gaza, patients and their families have turned to human rights organisations for assistance. Approximately 150 patients have approached PCHR and nearly three dozen patients have approached Al Mezan for help after the

<sup>36</sup> WHO, *Right to Health 2018*, p. 9, available at:

[http://www.emro.who.int/images/stories/palestine/documents/who\\_right\\_to\\_health\\_2018\\_web-final.pdf?ua=1](http://www.emro.who.int/images/stories/palestine/documents/who_right_to_health_2018_web-final.pdf?ua=1).

<sup>37</sup> Human Rights Watch, “Israel: Record-Low in Gaza Medical Permits,” 13 February 2018, available at:

<https://www.hrw.org/news/2018/02/13/israel-record-low-gaza-medical-permits>.

<sup>38</sup> OHCHR, “UN rights expert decries desperate state of right to health in Occupied Palestinian Territory,” 20 March 2018, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22854&LangID=E>.

<sup>39</sup> PCHR, “In Response to Israeli Allegations. PCHR Categorically Refuses Implications It Would Substitute PA in Patients’ Travel Coordination,” 9 June 2020, available at: <https://www.pchrgaza.org/en/?p=14633>.

<sup>40</sup> WHO, Monthly Reports on Health Access: Barriers for patients in the occupied Palestinian territory (April and May 2020), available at: <http://www.emro.who.int/pse/publications-who/monthly-referral-reports.html>.

coordination was stopped. According to PCHR, there are 8,326 cancer patients in the Gaza Strip who need urgent surgical intervention with no possibility of treatment in Gaza. Between January 2020 and 9 June 2020, PCHR helped 207 patients to access treatment outside of Gaza. Urgent efforts are needed to protect the fundamental rights of patients in the occupied Palestinian territory, in particular in the Gaza Strip.<sup>41</sup>

Israel, as the Occupying Power, has the primary responsibility to ensure access for Palestinian patients to essential health services, to lift the illegal closure of Gaza, and to dismantle the permit system. While recognising that the ultimate responsibility for the fulfilment of Palestinians' rights, including the right to health, lies with Israel, as Occupying Power, it is also important to highlight the impermissibility of retrogressive measures by duty-holders in the protection of economic, social, and cultural rights.<sup>42</sup> Notably, the State of Palestine bears responsibility under international human rights law to the extent of its effective control over the occupied Palestinian territory, which extends to the provision of essential medicines and issuance of referrals for patients and to ensuring the equity and transparency of processes for the provision of healthcare to Palestinians.

Third States further have a duty to respect and to ensure respect for international humanitarian law in the occupied Palestinian territory,<sup>43</sup> including to end all forms of unlawful collective punishment imposed on the Palestinian people, to ensure access to healthcare for Palestinians under Israeli occupation, and to support Gaza's infrastructure, including to develop the healthcare system and other essential services. Third States must work to end all movement restrictions for Palestinians in the occupied West Bank, including East Jerusalem, and the Gaza Strip, including for patients to access essential health services. Ultimately, third States must adopt effective measures to lift Israel's illegal closure of Gaza with immediate effect, as recommended by the UN Commission of Inquiry on the 2018 protests in the occupied Palestinian territory.<sup>44</sup> The Commission of Inquiry recommended that "States Members of the United Nations and civil society support the health-care system in Gaza, particularly with the resources necessary to treat injuries incurred at the [Great March of Return] protests."<sup>45</sup>

Palestinians' rights-based demands for the closure to be lifted and for root causes to be addressed were systematically suppressed by Israeli occupying forces during the Great March of Return in the Gaza Strip. Between 30 March 2018 and December 2019, Palestinian human rights organisations documented the killing of 217 Palestinians, including 48 children, four health workers, two journalists, and persons with disabilities during the demonstrations. During the same period, thousands were injured by Israeli forces, including 9,515 with live ammunition and shrapnel, including 2,134 children.

<sup>41</sup> See PCHR, "Death of a sick infant due to his inability to travel: The Center calls for finding a mechanism to guarantee that Gaza Strip patients travel to receive treatment abroad" [Arabic], 23 June 2020, available at: <https://www.pchrgaza.org/ar/?p=19257>.

<sup>42</sup> See WHO, Human rights and health, 29 December 2017, available at: <https://www.who.int/news-room/fact-sheets/detail/human-rights-and-health>.

<sup>43</sup> Common Article 1, Fourth Geneva Convention.

<sup>44</sup> A/HRC/40/74, para. 122(a).

<sup>45</sup> A/HRC/40/74, para. 124.

The Commission of Inquiry urged international justice and accountability and recommended that third States “consider imposing individual sanctions, such as a travel ban or an assets freeze, on those identified as responsible” of suspected war crimes and crimes against humanity,<sup>46</sup> and that “States parties to the Geneva Conventions and/or to the Rome Statute carry out their duty to exercise criminal jurisdiction and arrest persons alleged to have committed, or who ordered to have committed, the international crimes... and either to try or to extradite them.”<sup>47</sup>

The International Criminal Court has territorial jurisdiction in the Situation in Palestine, comprising the occupied West Bank, including East Jerusalem, and the Gaza Strip, and must urgently open a full, thorough, and comprehensive investigation into crimes committed in Palestine. In particular, the Court’s Prosecutor has concluded her preliminary examination into the Situation in Palestine and was satisfied that war crimes and crimes against humanity have been or are being committed in the occupied Palestinian territory.<sup>48</sup>

With impending Israeli annexation of large parts of the occupied West Bank, in violation of the prohibition on the acquisition of territory by force,<sup>49</sup> third States must be reminded of their responsibility not to recognise an illegal situation resulting from a serious breach of international law, not to render aid or assistance in maintaining the illegal situation, and to cooperate to bring the illegal situation to an end, as reaffirmed by the International Court of Justice in its 2004 advisory opinion on the Wall.<sup>50</sup> Notably, the advisory opinion deemed Israel’s construction of the Wall and its associated regime illegal. In the West Bank, Israel’s permit system is an integral part of this arbitrary regime. In the Gaza Strip, the permit system forms part of the illegal closure, and ultimately must be dismantled. Overall, third States and UN bodies must work to address the root causes prolonging the denial of the inalienable rights of the Palestinian people as a whole and to ensure that the right of the Palestinian people to self-determination as well as the right of return of Palestinian refugees, displaced persons, and exiles are guaranteed and fully realised.

<sup>46</sup> A/HRC/40/74, para. 127.

<sup>47</sup> A/HRC/40/74, para. 128.

<sup>48</sup> ICC, Statement of ICC Prosecutor, Fatou Bensouda, on the conclusion of the preliminary examination of the Situation in Palestine, and seeking a ruling on the scope of the Court’s territorial jurisdiction, 20 December 2019, available at: <https://www.icc-cpi.int/Pages/item.aspx?name=20191220-otp-statement-palestine>.

<sup>49</sup> *Charter of the United Nations* (adopted 26 June 1945, entry into force 24 October 1945), Article 2(4).

<sup>50</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, p. 136, para. 163.

## **9. Recommendations**

In light of the above, our organisations urge the relevant UN Special Procedures to urgently take the necessary measures to ensure that Palestinian patients from the Gaza Strip are guaranteed their right to the highest attainable standard of physical and mental health, including urgent access to healthcare, and, accordingly, to:

- i. Send an urgent communication calling on Israel, the Occupying Power, to immediately grant permits to Palestinian patients from the Gaza Strip for treatment in the rest of the occupied Palestinian territory, including East Jerusalem, or elsewhere, and to ensure that there are no delays or discrimination in access to healthcare;
- ii. Condemn the Israeli occupying authorities' denial of access to healthcare for Palestinian patients, in particular from the Gaza Strip, and urge that Israel, the Occupying Power, uphold the right of all Palestinians to the highest attainable standard of physical and mental health, in particular during the COVID-19 outbreak; and
- iii. Issue a press release calling on Israel, the Occupying Power, to lift its illegal closure of the Gaza Strip with immediate effect, as recommended by UN treaty bodies<sup>51</sup> and the UN Commission of Inquiry on the 2018 protests in the occupied Palestinian territory,<sup>52</sup> and as adopted in accountability resolution 40/13 by Member States of the UN Human Rights Council on 22 March 2019.<sup>53</sup>

<sup>51</sup> See CESCR, Concluding observations on the fourth periodic report of Israel, 12 November 2019, UN Doc. E/C.12/ISR/CO/4, para. 11(a); and CERD, Concluding observations on the combined seventeenth to nineteenth reports of Israel, 12 December 2019, UN Doc. CERD/C/ISR/CO/17-19, para. 45.

<sup>52</sup> A/HRC/40/74, para. 122(a).

<sup>53</sup> UN Human Rights Council, Resolution 40/13, UN Doc. A/HRC/RES/40/13, 22 March 2019, para. 2.