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### Human rights situation in Palestine and other occupied Arab territories

## Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967\*

### Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, submitted pursuant to Commission on Human Rights resolution 1993/2 A and Human Rights Council resolution 5/1. In it, the Special Rapporteur examines the current human rights situation in the Occupied Palestinian Territory, with a particular emphasis on the right to health.

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\* The present report was submitted after the deadline in order to reflect the most recent developments.

## I. Introduction

1. The present report is submitted by the current Special Rapporteur to the Human Rights Council pursuant to Commission on Human Rights resolution 1993/2 A and Human Rights Council resolution 5/1.
2. The Special Rapporteur would like to draw attention once again to the fact that he has not been granted access to the Occupied Palestinian Territory, nor have his requests to meet with the Permanent Representative of Israel to the United Nations been accepted. The Special Rapporteur re-emphasizes that an open dialogue with all parties is an essential element of his work in support of the protection and promotion of human rights. He further notes that access to the Occupied Palestinian Territory is a key element in the development of a comprehensive understanding of the human rights situation on the ground. While he does wish to recognize the exemplary work of experienced and competent civil society organizations, which provides an excellent basis for his work, he laments the lack of opportunity to meet with many of these groups due both to his exclusion from the territory and to the barriers many individuals face should they seek exit permits from the Israeli authorities, particularly from Gaza.
3. The present report is based primarily on written submissions and consultations with civil society representatives, victims, witnesses and United Nations representatives. The Special Rapporteur undertook his second annual mission to the region, to Amman, Jordan from 15-19 May 2017. In addition, in January 2018 he held several consultations with civil society by videoconference and received a number of written submissions, in particular related to the right to health.
4. In the present report, the Special Rapporteur focuses on the human rights and humanitarian law violations committed by Israel, in accordance with his mandate.<sup>1</sup> As the occupying Power, Israel has the legal obligation to ensure respect for and protection of the rights of Palestinians within its control.<sup>2</sup> The mandate of the Special Rapporteur thus focuses on the responsibilities of the occupying Power, although he notes that human rights violations by any State or non-State actor are deplorable and only hinder the prospects for peace.
5. The Special Rapporteur wishes to express his appreciation for the full cooperation with his mandate extended by the Government of the State of Palestine. The Special Rapporteur also wishes to extend his thanks once again to all those who travelled to Amman in May 2017 to meet with him and to those who were unable to travel but made written or oral submissions. The Special Rapporteur acknowledges the essential work being done and efforts undertaken by civil society organizations and human rights defenders to create an environment in which human rights are respected and violations of human rights and international humanitarian law are not committed with impunity and without witnesses. The Special Rapporteur will continue to support this work as much as possible.
6. The present report is set out in two parts. First, it provides an overview of the current human rights situation in the Occupied Palestinian Territory. This discussion, while not exhaustive, aims to highlight those human rights concerns the Special Rapporteur has identified as particularly pressing, with a focus on the human rights situation of children in the West Bank and in Gaza. In the second part of the report, the Special Rapporteur examines the right to health, with a particular focus on the increasingly dire humanitarian crisis in Gaza. It must be emphasized that the conditions in Gaza have been described as unliveable for many years now, and the people of Gaza have no choice but to persevere. The impact of the blockade on their right to health is explored in detail in this report.

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<sup>1</sup> As specified in the mandate of the Special Rapporteur set out in resolution 1993/2.

<sup>2</sup> See Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), art. 47.

## II. Current human rights situation

7. Since the Rapporteur's previous report to the Human Rights Council, the human rights situation in the Occupied Palestinian Territory has continued to deteriorate. Palestinians in Gaza and the West Bank, including East Jerusalem, have faced demolitions of homes and schools, arrest and arbitrary detention, and restrictions on freedom of movement. As the Rapporteur has noted in previous reports, Israel's occupation affects all aspects of life for Palestinians, from access to medical care, to building a home, to seeking to travel abroad.

8. On 6 December 2017 US President Donald Trump announced that the United States recognized Jerusalem as Israel's capital.<sup>3</sup> The announcement specified that the United States was not "taking any position on final status issues, including the specific boundaries of the Israeli sovereignty in Jerusalem, or the resolution of contested borders." This announcement resulted in significant political backlash from the international community and the Palestinians authorities, and widespread protests broke out across the West Bank and Gaza. The feeling of hopelessness among Palestinians resulting from this announcement cannot be overstated, and it is against the background of 50 years of occupation that this announcement, and current concerns with respect to human rights, must be viewed.

### A. The West Bank, including East Jerusalem

9. Over the course of 2017, the settlement enterprise steadily advanced after the start of the year saw a sharp rise in the number of new settlement units announced by the government.<sup>4</sup> In June, Prime Minister Benjamin Netanyahu announced that ground had been broken in the first new settlement established in 25 years, Amihai. The settlement was established for the families who were evacuated from the Amona outpost after the Israeli High Court declared the outpost to be illegal.<sup>5</sup> The settlement is expected to include 102 housing units, although only 41 families were evicted from the Amona outpost.<sup>6</sup> According to a report published by the External Action Service of the European Union at the end of 2017, the first half of the year saw development of settlement plans that would potentially enable more than 30,000 new settlers to move to the West Bank, including East Jerusalem.<sup>7</sup>

10. Settlements have been found to be at the center of many recurrent human rights violations in the West Bank. Palestinians living in close proximity to settlements must regularly pass through checkpoints on their way to school or work, towns or villages are subject to closure by the Israeli military, and night raids and arrests are frequent. According to data collected by Palestinian civil society, night raids by the Israeli military of Palestinian homes predominately occur within 2km of settlements.<sup>8</sup> Night raids often result in arrest and detention of Palestinians, in many cases of Palestinian children. According to civil society data, 98 percent of Palestinian children arrested live within 1.02 km of a settlement.<sup>9</sup>

#### Children

11. At the end of November 2017, figures released by the Israeli Prison Service indicated that 313 Palestinian minors were at that time being held in Israeli prisons, 2 of whom were being held on administrative detention orders, and 181 of whom were being held during ongoing legal proceedings.<sup>10</sup> It should also be noted that many Palestinian children are

<sup>3</sup> <https://www.whitehouse.gov/briefings-statements/statement-president-trump-jerusalem/>

<sup>4</sup> A/72/556 para. 11-13 and A/72/564.

<sup>5</sup> <https://www.theguardian.com/world/2017/jun/20/israel-new-settlement-benjamin-netanyahu-jared-kushner-amichai-amona> and <https://www.haaretz.com/israel-news/premium-1.807609>.

<sup>6</sup> A/72/564 para.6.

<sup>7</sup> [https://eeas.europa.eu/delegations/palestine-occupied-palestinian-territory-west-bank-and-gaza-strip/37466/six-month-report-israeli-settlements-occupied-west-bank-including-east-jerusalem-january-june\\_en](https://eeas.europa.eu/delegations/palestine-occupied-palestinian-territory-west-bank-and-gaza-strip/37466/six-month-report-israeli-settlements-occupied-west-bank-including-east-jerusalem-january-june_en).

<sup>8</sup> <http://www.wclac.org/english/userfiles/NIGHT%20RAIDS%20-%20UPDATE%20-%20JUNE%202016.pdf>.

<sup>9</sup> <http://www.militarycourtwatch.org/files/server/BRIEFING%20PAPER%20-%20FEB%202018.pdf>.

<sup>10</sup> [https://www.btselem.org/statistics/minors\\_in\\_custody](https://www.btselem.org/statistics/minors_in_custody).

arrested and released over the course of a year. In 2017, UNICEF reported that 729 children were detained or arrested in East Jerusalem alone.<sup>11</sup> According to the Convention on the Rights of the Child, deprivation of the liberty of a child should be used only as a last resort and for the shortest appropriate period of time.<sup>12</sup>

12. A 2013 UNICEF report noted that “ill treatment of Palestinian children in the Israeli military detention system appear to be widespread, systematic, and institutionalized” based on the volume of data the UN agency collected in the 10 years preceding the publication of this report.<sup>13</sup> Concerns highlighted in that report, and which continue to be raised today by civil society based on numerous allegations, include reports of physical and verbal abuse, regular use of hand ties and painful restraints, coerced confessions, lack of access to lawyer and family members, and consistent use of night arrests.<sup>14</sup> The Convention on the Rights of the Child, to which Israel is a party, guarantees a number of protections to children given their particular needs and vulnerabilities. The practices described by organizations working to protect and assist children in detention not only fail to take into account the particularly vulnerable position of children, but also deny children their fundamental rights. The negative impact of these practices on the next generation of Palestinians is one of the greatest tragedies of the ongoing occupation.

13. This issue was brought to light once again at the start of 2018 by the arrest and detention of 17-year-old Ahed Tamimi. She was arrested after video footage showing her physically confronting two Israeli soldiers near her family’s home in the West Bank was circulated in the media. The Office of the High Commissioner for Human Rights in the Occupied Palestinian Territory has called for Ms. Tamimi’s best interests to be the primary consideration in her ongoing detention and trial. The Special Rapporteur, together with the Working Group on Arbitrary Detention, have raised concerns about her pre-trial detention and detention on remand.<sup>15</sup> Ms. Tamimi’s case is emblematic of the broader issues arising from the practice of arrest and detention of children in the Occupied Palestinian Territory, and more broadly of the fact that children are bearing the brunt of the impact of the occupation and associated human rights violations. The importance of ensuring the rights of children are respected and protected cannot be overstated.

14. Daily life in the West Bank is continually affected by the often heavy presence of Israeli Security Forces (see A/HRC/34/70 para 16), for example at checkpoints and in relation to closures of roads and neighborhoods - measures which in many cases may amount to collective punishment (see A/71/554, paras. 25-32). Children continue to be affected by these restrictions on movement in the West Bank – a particular concern when seeking to access hospitals in East Jerusalem, as well as schools. To address this issue, UNICEF supports the provision of protective presence to teachers and students going to and from school in the West Bank – in 2017 this support was provided to 8,123 children and 414 teachers.<sup>16</sup>

15. In addition to difficulty accessing schools, demolition of schools is an additional concern, particularly in communities at risk of forcible transfer in the Jerusalem periphery (see A/HRC/34/39 paras 40-57). In 2017 UNRWA reported on the situation of Khan Al Ahmar, a Bedouin community at risk of forcible transfer in the West Bank. In Khan al Ahmar, the Israeli Civil Administration issued demolition orders for 44 structures – including the

<sup>11</sup> [https://www.unicef.org/appeals/files/UNICEF\\_State\\_of\\_Palestine\\_Humanitarian\\_Situation\\_Report\\_\\_Year\\_End\\_2017.pdf](https://www.unicef.org/appeals/files/UNICEF_State_of_Palestine_Humanitarian_Situation_Report__Year_End_2017.pdf).

<sup>12</sup> CRC/C/GC/10 para. 79.

<sup>13</sup> (see A/71/554, paras. 25-32).

[https://www.unicef.org/oPt/UNICEF\\_oPt\\_Children\\_in\\_Israeli\\_Military\\_Detention\\_Observations\\_and\\_Recommendations\\_-\\_6\\_March\\_2013.pdf](https://www.unicef.org/oPt/UNICEF_oPt_Children_in_Israeli_Military_Detention_Observations_and_Recommendations_-_6_March_2013.pdf) p.13.

<sup>14</sup> <http://www.militarycourtwatch.org/files/server/BRIEFING%20PAPER%20-%20FEB%202018.pdf>; [https://www.unicef.org/oPt/UNICEF\\_oPt\\_Children\\_in\\_Israeli\\_Military\\_Detention\\_Observations\\_and\\_Recommendations\\_-\\_6\\_March\\_2013.pdf](https://www.unicef.org/oPt/UNICEF_oPt_Children_in_Israeli_Military_Detention_Observations_and_Recommendations_-_6_March_2013.pdf) p. 14; <https://www.hrw.org/world-report/2018/country-chapters/israel/palestine> and [http://www.dci-palestine.org/year\\_in\\_review\\_worst\\_abuses\\_against\\_palestinian\\_children\\_in\\_2017](http://www.dci-palestine.org/year_in_review_worst_abuses_against_palestinian_children_in_2017).

<sup>15</sup> <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22590&LangID=E> and <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22654&LangID=E>.

<sup>16</sup> [https://www.unicef.org/appeals/files/UNICEF\\_State\\_of\\_Palestine\\_Humanitarian\\_Situation\\_Report\\_\\_Year\\_End\\_2017.pdf](https://www.unicef.org/appeals/files/UNICEF_State_of_Palestine_Humanitarian_Situation_Report__Year_End_2017.pdf).

school – in the community in early 2017. The community received a temporary injunction in March 2017, but representatives of the nearby settlement of Kfar Adumim submitted a petition seeking to compel the Israeli Civil Administration to demolish the school as it was built without required permits (which are nearly impossible for Palestinians to obtain, see A/71/554 para 35). According to information submitted by UNRWA, the State response to this petition confirms that the community is expected to relocate to a site identified by the Government of Israel and that the State intends to demolish the school and structures in early 2018, proposing to build an alternative school at the relocation site. As at the start of 2018, the High Court had upheld these orders although the demolitions had not yet been carried out.

16. In the West Bank, UNRWA has raised concerns regarding Israeli forces' repeated use of large amounts of tear gas, particularly in crowded areas and confined spaces, including refugee camps and homes within camps. This practice has a particularly detrimental effect on vulnerable populations like children and the elderly as the tear gas does not dissipate in densely populated or confined areas. UNRWA reported at least 48 incidents in 2016 in which tear gas canisters, stun grenades, plastic-coated metal bullets or live ammunition used by Israeli forces landed in UNRWA compounds or damaged UNRWA installations. These incidents resulted in one injury as well as lost school and work days for students and staff suffering from tear gas inhalation. It should be noted that tear gas may only be used where strictly necessary in a law enforcement context, must be carefully controlled to minimize the risk to children and uninvolved persons,<sup>17</sup> and must be used in proportion to the seriousness of the offence and the legitimate objective to be achieved.<sup>18</sup>

### Legal Developments

17. The continued advancement of the settlement enterprise described above is accompanied by a worrying number of legislative and legal policy developments, which, if continued, would have the effect of making the expropriation of private Palestinian land merely an administrative matter, occurring in a sense away from the public eye.

18. Legislative measures aimed at extending Israeli jurisdiction to the West Bank have proliferated recently, with a notable example being the recent passage of a bill which gives authority over institutions of higher education in the West Bank to an Israeli governmental body. The Knesset Member who initiated the legislation reportedly said, when discussing the new legislation, “alongside the academic importance of the law, there is a clear element here of applying sovereignty and I’m proud of both of these things.”<sup>19</sup> This legislation comes after the passage last year of the so-called “regularization law” which allowed for the retroactive legalization, under domestic law, of outposts built illegally on private Palestinian land. It should be noted that settlements of all kinds are considered illegal under international law (see A/72/564 para 14). In addition to allowing for the confiscation of private Palestinian land, the passage of this law was the first time Israel extended its jurisdiction to matters involving private Palestinian land in the occupied territory.

19. In addition to legislative moves seeking to extend Israeli control over the occupied West Bank, there are further policy shifts which have been described as attempts to “normalize” Israeli settlements in the West Bank. For example, according to media reports, the Attorney General in December 2017 issued a directive mandating that all government-sponsored bills include a clause specifying whether or not the bill would also apply to the Occupied Palestinian Territory.<sup>20</sup>

20. These new laws and policy shifts, accompanied by the continued proposal of various legislative measures seeking to annex specific settlements and municipalities in the West Bank, represent what has been called a paradigm shift in the way the Israeli government conducts the occupation. The legal framework of occupation, and the protections it provides,

<sup>17</sup> Basic Principles on the Use of Force and Firearms by Law Enforcement Offices, 3, 5(c), 14.

<sup>18</sup> Basic Principles on the Use of Force and Firearms by Law Enforcement Offices, 5(a).

<sup>19</sup> <https://www.haaretz.com/israel-news/israel-votes-to-expand-israeli-law-to-academic-institutions-in-w-bank-1.5810994>.

<sup>20</sup> <https://www.haaretz.com/israel-news/.premium-new-draft-laws-must-also-consider-settlers-in-west-bank-says-israeli-ag-1.5630121>.

are steadily being eroded by this legislation which seeks to regulate the West Bank as if it's a part of Israel.

## **B. Gaza**

21. Despite widespread recognition that the situation in Gaza is unsustainable, unliveable, and in many ways horrific, little progress has been made in improving the humanitarian situation of the people there. Many in Israel recognize this building crisis, and the Palestinian Authority similarly is well-aware of the deteriorating conditions for Gaza's residents. After ten years of blockade, the population of Gaza is in a particularly vulnerable position, with as much as 70% of the population dependent upon some form of humanitarian assistance. The electricity crisis which significantly intensified in May 2017, although alleviated slightly in the intervening months, continues to negatively impact the situation of the residents of Gaza as of January 2018. The reconciliation process initiated in November 2017 between the authorities in Gaza and Fatah in the West Bank seems to have all but stopped, and punitive measures imposed on the authorities in Gaza by the Palestinian Authority continue to negatively impact the human rights and humanitarian situations of Gaza's residents. This combined with ten years of Israel's blockade and continued restrictions on the movement of people and goods have contributed to growing feelings of hopelessness and desperation for the people of Gaza.

### **Children**

22. It must be noted that the impact of the occupation on children is not limited to the situation in the West Bank. In Gaza, restrictions on freedom of movement and difficulty importing goods critical for service delivery undermine economic prospects and the availability of essential services. These restrictions imposed by Israel continue to impede the realization of a broad range of human rights, including economic, social and cultural rights such as the rights to health and education, and ultimately an adequate standard of living. Children growing up in this environment face innumerable challenges.

23. Excessive use of force against Palestinians by Israeli forces is a concern in the area along the border fence, and often has an impact on children. In mid-February 2018, two Palestinian teenagers aged 14 and 16 were killed, and two others injured by Israeli forces who fired what was reportedly artillery shells and live fire towards the boys as they approached the fence, although they were reportedly between 30 to 50 meters away when shot.<sup>21</sup> This incident raises concerns about the decision to use lethal force against young, unarmed boys, as according to the Basic Principles of the Use of Force, lethal force should be used only if other means are ineffective, and should be used with restraint and in proportion to the seriousness of the offence and the legitimate objective to be achieved. Not only in Gaza, but in the West Bank as well, use of force by Israeli forces has consistently been flagged as an issue of concern by the Special Rapporteur, the High Commissioner, and the Secretary-General. This concern is necessarily heightened when children are the victims.

24. In addition to actions which negatively affect the rights to life and to security of person, the conditions in Gaza have an untold effect on economic, social, and cultural rights (for a detailed discussion of the right to development in Gaza see A/71/554 paras 45-48). Children bear a disproportionate negative burden in this respect. Growing up in Gaza means growing up with limited access to healthcare, which will be discussed in more detail below. In addition, schools and education suffer due to lack of resources, travel restrictions, electricity cuts, and crumbling infrastructure. UNICEF, Save the Children, and the UN Humanitarian Coordinator Robert Piper issued a joint statement in September 2017 highlighting the fact that Palestinian children continue to struggle to realize their right to education. In Gaza in particular, schools are overcrowded after infrastructure has been significantly damaged by escalations of hostilities, and reconstruction remains difficult given Israel's tight restrictions on import of materials, along with the failing economy of the strip and budget shortages. Two-thirds of schools in Gaza are operating in double shifts –

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<sup>21</sup> [http://www.dci-palestine.org/israeli\\_forces\\_kill\\_two\\_teenagers\\_on\\_gaza\\_strip\\_border](http://www.dci-palestine.org/israeli_forces_kill_two_teenagers_on_gaza_strip_border).

welcoming different groups of students in the morning and then in the afternoon, and students who study at night often do so by candlelight as a result of the ongoing electricity crisis.<sup>22</sup> Education in Gaza is heavily dependent upon UNRWA, who operate more than 250 schools in the strip. Due to travel restrictions and the near impossibility of obtaining a permit to exit Gaza, teachers, professors, and students are unable to travel for needed training, and cannot access educational opportunities abroad.

25. The right to education is enshrined in Article 13 of the International Covenant on Economic, Social, and Cultural Rights, to which Israel is a party. Despite Israel's position that it does not have human rights obligations in the Occupied Palestinian Territory, based on findings of the Human Rights Committee and other United Nations treaty bodies, as well as the 2004 *Wall* Advisory Opinion of the International Court of Justice, Israel's human rights obligations extend to the Occupied Palestinian Territory and apply concurrently to its obligations under International Humanitarian Law (see A/HRC/34/38 paras 6-9).

26. General Comment 13 of the Committee on Economic, Social, and Cultural rights further notes that "Education is both a human right in itself and an indispensable means of realizing other rights." The General Comment further notes that with education, marginalized children and adults can gain the tools needed to lift themselves out of poverty and participate fully in their communities. Efforts to stymie this right are in turn efforts to ensure that a population remains trapped in a situation of poverty and desperation. For children growing up under the blockade and closure of Gaza, the importance of access to education is clear. A path by which to learn and grow and seek constructive ways to change their situation is an essential with which they must be provided.

### III. Right to Health

27. A four-year-old girl in Gaza suffering from heart failure dies following the denial of permission by Israeli authorities for her to return to East Jerusalem for pediatric cardiology treatment that is unavailable in Gaza.<sup>23</sup> Access to safe and sufficient drinking water in the Occupied Palestinian Territory is severely compromised by the discriminatory access to hydro-sources in the West Bank, and by the depleted and contaminated water aquifers in Gaza.<sup>24</sup> The principal Palestinian hospital in East Jerusalem is raided repeatedly by heavily-armed Israeli soldiers and police who fire stun grenades and sponge rounds, resulting in mayhem and fear among patients and staff.<sup>25</sup> Significant stocks of essential drugs are exhausted in Gaza hospitals and are unable to be replaced, even as emergency services in local hospitals are reduced because of political decisions to cut electricity supplies to the territory.<sup>26</sup> Health workers in the West Bank are frequently impeded in their ability to reach patients and hospitals because of interference by Israeli security forces, including delays at checkpoints and the requirement to transfer patients from Palestinian ambulances to Israeli-registered ambulances before entering East Jerusalem.<sup>27</sup>

28. These recent examples, among many others, raise serious concerns about the fulfillment of the right to health in the Occupied Palestinian Territory. In recent years, civil society organizations and international agencies have extensively documented the significant and chronic challenges to health care and wellbeing related to the occupation of the Palestinian territory. Relying upon the World Health Organization's (WHO) definition of health as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity"<sup>28</sup> and understanding health within the context of human

<sup>22</sup> <https://www.ochaopt.org/content/right-education-1-million-palestinian-children-risk>.

<sup>23</sup> <https://www.haaretz.com/middle-east-news/palestinians/.premium-for-some-sick-gazans-the-wait-for-an-exit-permit-ends-in-death-1.5627529>.

<sup>24</sup> Amnesty International, "The Occupation of Water", (30 November 2017).

<sup>25</sup> B'Tselem, "Israeli security forces endangered patients' lives at al-Makassed hospital, East Jerusalem" (2017); PHRI, "Report on the Armed Raid on al-Maqassed Hospital (2017).

<sup>26</sup> World Health Organization, *Special Situation Report, Gaza, December 2017 to January 2018* (February 2018).

<sup>27</sup> Medical Aid for Palestinians (MAP), *Health Under Occupation* (September 2017).

<sup>28</sup> Constitution of the WHO.

security and the enlargement of dignity and human choices,<sup>29</sup> this portion of the Special Rapporteur’s report examines the impediments to the realization of the right to health in the Occupied Palestinian Territory.

## A. The Right to Health under International Law

29. The right to health is one of the most fundamental and widely recognized of human rights. The right touches upon everything that we do as humans, and its robust promotion is one of the most effective tools available to reduce the scourges of social and economic inequalities, gender disparities, discrimination and poverty. Reflecting the indivisibility and interdependence of all human rights, the right to health is indispensably linked to the realization of other recognized rights, including the rights to water, housing, food, work, education, life and human dignity. As the World Health Organization (WHO) has stated: “[W]ithout health, other rights have little meaning.”<sup>30</sup>

30. The right to health is well anchored within international law.<sup>31</sup> Article 25 of the *Universal Declaration of Human Rights* states that: “Everyone has the right to a standard of living adequate for the health and well-being of himself and his family...” Article 12(1) of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) establishes the broad nature of states’ obligations to ensure the availability of, access to, acceptability of, and quality of health services in its proclamation of: “...the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” In its General Comment No. 14, the Committee on Economic, Social and Cultural Rights (CESCR) has linked the right to health not only to the availability of quality health care services but to a wide range of socio-economic determinants that together promote the conditions by which people can lead a healthy life. The right to health is also expressly found in core international human rights instruments including the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination Against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on the Rights of Persons with Disabilities, as well as in important regional human rights instruments in Europe, the Americas and Africa.

31. The right to health creates a range of specific obligations upon states,<sup>32</sup> including:

- The progressive realization of the principle of enjoying the highest attainable standard of physical and mental health;
- Ensuring equality of access to health care and health services for all, without discrimination;
- The obligations to *respect* (to refrain from interfering with a right), *protect* (to prevent third-parties from interfering with a right) and *fulfill* (to take steps to ensure the fullest possible realization of a right) the right to health;
- The protection of vulnerable and marginalized groups, including women, children, older persons, persons with disabilities, minorities and indigenous peoples; and
- The provision and enhancement of the underlying social determinants of health, including food, housing, sanitation, safe water and physical security.

32. For protected peoples living under occupation, their right to health is also guaranteed by international humanitarian law and the laws of occupation. In particular, the Geneva Convention relative to the Protection of Civilians in Time of War of 12 August 1949 (the Fourth Geneva Convention), together with the Additional Protocols and customary international law, places the overall responsibility for civilian access to health care in an

<sup>29</sup> R. Batniji et al, “Health as Human Security in the occupied Palestinian territory” (2009), 373 *The Lancet* 1133-43.

<sup>30</sup> A/CONF. 32/8.

<sup>31</sup> J. Tobin, *The Right to Health in International Law* (Oxford: Oxford University Press, 2012).

<sup>32</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 14.



occupied territory upon the occupying power.<sup>33</sup> Among the extensive responsibilities assumed by the occupying power for the civilian population are: the protection and respect for the wounded, sick and infirmed;<sup>34</sup> the protection of civilian hospitals and their personnel;<sup>35</sup> the assurance that the medical supplies for the population are adequate;<sup>36</sup> the maintenance of the medical and hospital establishment and services, public health and hygiene of the territory;<sup>37</sup> and the facilitation of medical personnel of all categories to fulfill their duties.<sup>38</sup> As well, the United Nations Security Council has stated that all parties to a conflict must ensure that medical and humanitarian staff and health facilities are not attacked.<sup>39</sup>

33. Israel, as the occupying power, has specific and significant obligations under international law to ensure the health and welfare of the Palestinian population under its control. As a state party to the ICESCR and as an occupying power, Israel is required to observe international human rights law throughout the occupied Palestinian territory.<sup>40</sup> And as a state party to the Geneva Conventions of 1949 and as the occupying power, Israel is bound under international treaty and customary law to scrupulously apply the Fourth Geneva Convention and the other obligations of international humanitarian law.<sup>41</sup>

## B. The Situation of Health in the Occupied Palestinian Territory

34. The unprecedented length and character of Israel's fifty-year acquisitive occupation – driven by the logic of demographic engineering and territorial annexation, both *de jure* and *de facto* – has badly fragmented the Palestinian territory.<sup>42</sup> The consequence has been the political separation and geographic isolation of the West Bank, East Jerusalem and Gaza from one another, significantly impinging upon the Palestinians' internal freedom of movement. This fragmentation likewise splinters the delivery of Palestinian health services and deforms the social determinants of health throughout the occupied Palestinian territory.<sup>43</sup> Because the Occupied Palestinian Territory lacks any reliable frontier with a neighbouring country, Israel completely controls the Palestinians' external freedom of movement as well.<sup>44</sup>

35. In the West Bank, health care is primarily delivered by the Palestinian Authority and the United Nations Relief and Works Agency (UNRWA), while in Gaza, the governing authority and UNRWA are the principle providers of health services. Palestinian private health providers and Palestinian and international non-governmental organizations also play an important role in health delivery. Nonetheless, the extensive control exercised by the

<sup>33</sup> See generally A. Clapham et al, *The 1949 Geneva Conventions: A Commentary* (Oxford: Oxford University Press, 2015), esp. chaps. 37, 39 & 40.

<sup>34</sup> Fourth Geneva Convention, Arts. 15, 16.

<sup>35</sup> *Ibid*, Arts. 18 & 20.

<sup>36</sup> *Ibid*, Art. 55.

<sup>37</sup> *Ibid*, Art. 56.

<sup>38</sup> *Ibid*, Arts. 23 & 56.

<sup>39</sup> UNSC Res. 2286 (3 May 2016).

<sup>40</sup> International human rights law applies to a territory under occupation: see *Advisory Opinion Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, I.C.J. Reports 2004, para. 111-113 (9 July 2004). Also see CCPR/C/ISR/CO 4, para. 5.

<sup>41</sup> UNSC Res. 2334 (23 December 2016). Also see A. Gross, "Litigating the Right to Strike under Occupation: Between Bureaucracy and Humanitarianism" (2018), 27 *Minnesota Journal of International Law* (forthcoming).

<sup>42</sup> The October 2017 report of the Special Rapporteur (A/72/556) submitted that Israel, as the occupying power, has reached the status of an illegal occupier because of its violation of the fundamental principles of international law governing a belligerent occupation, including no-annexation; temporariness; good faith; and compliance with international law and the directions of the international community.

<sup>43</sup> PHR-I, *Divide and Conquer: Inequality in Health* (January 2015).

<sup>44</sup> The only direct frontier between the occupied Palestinian territory and a state other than Israel is the Rafah crossing between Gaza and Egypt. The exit crossing is only open intermittently: in 2015, it was open for 24 days; in 2016, for 38 days; and in 2017, for only 21 days: WHO, *Monthly Report – Health Access for Referral Patients from the Gaza Strip* (December 2017).

Israeli occupation over the daily lives and movement of the Palestinian population decisively and adversely affects the health services and health outcomes in these areas. In East Jerusalem, where the Israeli health care system is available to the resident Palestinians, their standard of living and their access to health services is considerably inferior to that enjoyed by Jewish Israeli Jerusalemites.<sup>45</sup>

## 1. Gaza

36. As noted above, the health and humanitarian crisis in Gaza has become acute, bordering on a human calamity. Gaza has suffered grievously through three destructive wars in 2008-09, 2012 and 2014.<sup>46</sup> Israel has imposed a comprehensive blockade on Gaza's land, sea and air frontiers since 2007, which amounts to a form of collective punishment prohibited by international law.<sup>47</sup> This blockade comprehensively controls and restricts the movement of people and goods in and out of Gaza, resulting in economic suffocation, faltering reconstruction efforts, social and familial isolation from the outside world and a dire impact upon the territory's already-anemic living and health standards. The 12-year-old political schism between the Palestinian Authority and the authority governing Gaza has further compounded this misery. The social and economic consequences of the blockade are detailed in paragraph 10 of this report, as well as previous reports of the Special Rapporteur (A/72/554 paras. 8-10, A/HRC/34/70 paras 18-29). Given the critical state of health care in Gaza, the Special Rapporteur is devoting an outsized portion of this report to this topic.

37. The two million people living in Gaza rely upon a health care system that UN health officials have said is on the edge of collapse.<sup>48</sup> According to the WHO, an estimated 206 (40 per cent) of the 516 listed essential medicines in its basic health basket were completely out of stock by the end of January 2018, and another 43 per cent of essential drugs had less than a month's supply remaining.<sup>49</sup> This included drugs required for treating cancer and autoimmune diseases, performing dialysis and conducting cardiac angiographies.<sup>50</sup> OCHA has noted that the funding, purchase and delivery of medicines is the responsibility of the Palestinian authority, and observed a decline in the supply of essential drugs associated with internal Palestinian divisions, while noting a slight improvement by the start of 2018.<sup>51</sup> Nonetheless, shortages of vital laboratory supplies has meant that hematology, cultures and blood chemistry services can only be conducted for hospitalized patients and no longer at out-patient clinics.<sup>52</sup> As well, serious shortages of essential medical disposables – such as syringes, line tubes, filters for dialysis and dressing materials – had also been reported.<sup>53</sup>

38. The crippling electricity shortages in Gaza have forced many hospitals to shut wards and ration essential services such as operating theatres, emergency departments, diagnostic services, general medical wards, instrument sterilization and the treatment of chronic illnesses.<sup>54</sup> At the beginning of 2018, three hospitals had temporarily closed, along with

<sup>45</sup> United Nations Conference on Trade and Development, *The Palestinian Economy in East Jerusalem: Enduring Annexation, Isolation and Disintegration* (2013).

<sup>46</sup> S. Roy, *The Gaza Strip: The Political Economy of De-Development* (3<sup>rd</sup> ed.) (Washington: Institute of Palestine Studies, 2016).

<sup>47</sup> A/HRC/34/36 para 36 with references. Collective punishment is expressly prohibited by Article 33 of the Fourth Geneva Convention as well as by customary international law. See S. Darcy, "The Prohibition of Collective Punishment" in A. Clapham et al, *The 1949 Geneva Conventions: A Commentary*.

<sup>48</sup> A. Hass, "Gaza health system collapsing: 40 per cent of medicine runs out", *Ha'aretz*, 7 February 2018; R. Ratcliffe, "Gaza's health system close to collapse as electricity crisis threatens total blackout", *The Guardian*, 3 January 2018; Palestinian Center for Human Rights, "PCHR is Concerned that Health Sector Would Collapse Due to Shortage of Medicines in the Gaza Strip Hospitals" (January 2018).

<sup>49</sup> WHO *supra* note 26.

<sup>50</sup> PHR-I, *Overview of the Gaza Health System* (February 2018).

<sup>51</sup> <https://www.ochaopt.org/content/only-marginal-improvement-humanitarian-situation-gaza-strip-wake-intra-palestinian>

<sup>52</sup> PHR-I *supra* note 50.

<sup>53</sup> *Ibid.*

<sup>54</sup> WHO *supra* note 26.

thirteen primary healthcare clinics, affecting healthcare delivery to more than 300,000 people.<sup>55</sup> Neonatal intensive care units have become overcrowded in the face of maternal malnutrition and rising rates of premature and low-weight babies.<sup>56</sup> For the hospitals that remain open, bed occupancy rates are reported to be above 90 per cent. By December 2017, the waiting time for elective surgery stood at 52 weeks, well beyond the operative threshold of 24 weeks.<sup>57</sup> Compounding the problem of treatment services has been the inability by Gaza hospitals to obtain Israeli permission to import replacement parts for vital diagnostic imaging equipment, putting them out of service for months and even years.<sup>58</sup> Serious funding shortages have affected the ability of hospitals to purchase fuel to power, maintain and repair their electrical generators during the endemic electricity cuts.

39. This dilapidated and failing Gaza health care sector is overwhelmingly a human-made crisis. Notwithstanding the best efforts of the medical and health staff working in the territory, they have been unable to service Gaza's residents at anywhere near the health system's potential. One consequence of this acute crisis has been the compelling need to refer larger numbers of patients with serious or chronic health conditions to medical facilities outside of Gaza for treatment that they should be able to, but cannot, receive in the territory. At this stage, a further significant impediment to the fulfillment of the right to health in Gaza is encountered.

40. Israel administers a byzantine and opaque exit permit system imposed upon those patients who require specialized treatment in East Jerusalem (the location of the most advanced medical facilities within the Occupied Palestinian Territory), the rest of the West Bank, or abroad.<sup>59</sup> Patients with complex disorders who are unable to be adequately treated in Gaza include: cancer patients requiring surgery, chemotherapy and/or radiotherapy; pediatric patients with metabolic disorders or congenital defects; heart patients requiring open-heart surgery or with post-operative complications; eye patients in need of specialized surgery or cornea transplants; bone-disease patients requiring hip or knee joint surgery; neurosurgical patients; patients requiring MRI (magnetic resonance imaging) scans; and patients with blood diseases.<sup>60</sup> For virtually all of these patients, time is of the essence, either because of the deteriorating nature of their serious or life-threatening disorders, or because life is at an absolute standstill as long as their chronic and debilitating health conditions remain unresolved.

41. Beyond the question of urgency, Physicians for Human Rights – Israel has criticized the Israeli authority's criteria of distinguishing exit permit applications on the basis of those who require life-saving-or disability-preventing medical treatments and those whose medical needs are less urgent, stating that this distinction "...is at odds with the rules of medical ethics, according to which every patient must be allowed access to the best possible treatment available to him/her, regardless of its urgency or the severity of his/her medical condition."<sup>61</sup>

42. A patient with a complex disorder is first assessed by medical professionals in Gaza as to whether her or his condition can be adequately treated by the resources available within the local health system.<sup>62</sup> If the assessment determines that care must be sought outside of Gaza, the Palestinian Ministry of Health has the responsibility to approve the referral request. The patient's application is then forwarded to the Israeli authorities for permission for the patient and his or her travelling companion to exit the territory through the Erez crossing and travel to a hospital outside of Gaza.

<sup>55</sup> *Ibid.*

<sup>56</sup> *The Guardian*, "Gaza's health system close to collapse as electricity crisis threatens total blackout".

<sup>57</sup> WHO *supra* note 26.

<sup>58</sup> PHR-I *supra* note 50.

<sup>59</sup> A. Vitullo et al, "Barriers to the access to health services in the occupied Palestinian territory: A cohort study" (2012), *The Lancet* (8 October 2012).

<sup>60</sup> Al Mezan, *Medical Care Under Siege* (February 2018).

<sup>61</sup> PHR-I, *Denied 2: Harassment of Palestinian Patients Applying for Exit Permits* (August 2016).

<sup>62</sup> Al Mezan, *Medical Care Under Siege*; and WHO, *Timeline for Gaza Patient Referrals*, <https://unispal.un.org/DPA/DPR/unispal.nsf/0/604F89F84BAAA88085258169004FA797>.

43. An application comes with no guarantee of success, and approval rates for travel outside of Gaza have been steadily declining. Since WHO began collecting statistics for medical permit approvals in 2008, 2017 has marked the lowest annual approval rate. In 2012, the approval rate was 92 per cent; it declined to 82 per cent in 2014; and declined further to 62 per cent in 2016. According to WHO, the approval rate by Israeli authorities for the 25,812 health travel permit applications filed from Gaza in 2017 had tumbled to 52.4 per cent. While only 2.6 per cent of the applications were formally rejected by Israeli authorities (invariably with no clear reasons provided) in 2017, a large number – 45 per cent – were delayed, with no response provided.<sup>63</sup> An estimated 11,000 medical appointments were missed in 2017 by patients from Gaza whose travel permit applications were either denied or delayed.<sup>64</sup>

44. The WHO has documented that 54 patients died in Gaza in 2017 who had applied for a medical travel permit, and who had either been denied permission or who had not received an answer to their application.<sup>65</sup> Three of these deaths are illustrative of this broader tragedy.<sup>66</sup>

45. *Abeer Abu-Jayyad*, 46, suffered from breast cancer, and required a treatment course of Herceptin. This drug was unavailable in Gaza, and she had applied for a health travel permit for treatment at Augusta Victoria hospital in East Jerusalem. Her travel applications were denied on security grounds by the Israeli authorities, and she missed her scheduled appointments. Abeer died in Gaza on 8 June 2017 after the cancer metastasized. (Abeer's case exemplified a distressing trend: 46 of the 54 deaths in 2017 were cancer patients who were unable to receive adequate health treatment in Gaza.) *Ahmed Hasan Shbeir*, 17, was born with a congenital heart defect. Because of the limited capacity to treat his condition in Gaza, Ahmed travelled regularly to hospitals in East Jerusalem and Israel for specialized treatment. However, beginning in September 2016, applications for a health travel permit filed by Ahmed's family were first not answered, and then formally refused, by Israeli authorities. His condition deteriorated, and he subsequently died on 14 January 2017 in Gaza. *Aya Khalil Abu Mutlaq*, 5, was born with cerebral palsy and was initially treated in Gaza. In early February 2017, after obtaining a medical referral from the Palestinian Ministry of Health, Aya's family sought a medical travel permit from the Israeli authorities for her to receive treatment at Al-Makassed hospital in East Jerusalem. She secured, but missed, three appointments at Al-Makassed after her family received no responses to their repeated applications. While waiting for an answer to the third permit request, Aya died on 17 April 2017. It is not known whether any of the 54 patients would have either recovered or stabilized had permission to travel been granted, but the chances of their health improving were negligible without the opportunity to obtain the care they required outside of Gaza.

46. The difficulties faced by cancer patients in Gaza in the face of the blockade has been recently reviewed by PHRI and by Al Mezan.<sup>67</sup> In Gaza, only some chemotherapy treatments and auxiliary drugs are available. Operations to remove tumours are difficult in the face of electricity and fuel shortages. Radiation therapy and medical diagnostics requiring radioisotopes are non-existent because of the lack or non-functioning of necessary instruments such as linear accelerators or PET-CT scanners, and the prohibition on the import of medical radioisotopes into Gaza.. Cancer diagnosis in Gaza is frequently made at the end stage of the disease, and cancer patients report a low quality of life, reflecting the lack of adequate resources for detection and treatment.<sup>68</sup> Cancer patients are regularly referred for treatment outside of Gaza, but a growing number are denied exit permits or face delays in receiving their exit permits from the Israeli authorities.

47. PHRI has observed that the Israeli authority which grants travel permission – the Coordinator of Government Activities in the Territories (COGAT) – has increasingly exceeded its own time-limits for providing responses to health travel applications, sometimes

<sup>63</sup> WHO, *supra* note 26; Al-Mezan, *Medical Care Under Siege*.

<sup>64</sup> Human Rights Watch, *Israel: Record-Low in Gaza Medical Permits* (13 February 2018).

<sup>65</sup> WHO, *supra* note 26.

<sup>66</sup> These profiles were collected by Al Mezan, *Medical Care Under Siege*.

<sup>67</sup> PHRI-I, *supra* note 50; Al Mezan, *Medical Care Under Siege*.

<sup>68</sup> A. Shamallakh et al, "Quality of Life in patients with cancer in the Gaza Strip: A cross-sectional study" (2017), 390 *The Lancet* S21.

by months. Referring specifically to the plight of female cancer patients from Gaza, PHR-I has stated that the decision-making delays by COGAT amounts “...to a policy of disparaging the suffering of patients and shirking Israel’s responsibilities for the consequences of the restrictions it deliberately imposes.”<sup>69</sup> PHR-I has reported that a large number of exiting patients, many of whom are cancer patients, have been closely interrogated for intelligence information, which PHR-I deems to be unethical and immoral.<sup>70</sup>

48. Medical professionals and health delivery staff in Gaza, already underpaid, have been receiving only half to a quarter of their salaries, and in some cases no salary at all, in recent months.<sup>71</sup> Staff strikes protesting the salary suspensions have further impaired the delivery of health care.<sup>72</sup> The severe restrictions in movement imposed by the Israeli blockade have meant that doctors and nurses in Gaza face significant hurdles in receiving COGAT permission to leave the territory to receive specialized professional training elsewhere in the Occupied Palestinian Territory or abroad: only 40 per cent of exit applications by health professionals were approved in 2017.<sup>73</sup> During the 2014 war, 23 health professionals in Gaza were killed, and another 78 were injured. An estimated 45 ambulances were damaged or destroyed, and 73 hospitals and clinics were struck.<sup>74</sup>

49. Geographically, Gaza and Israel are cheek and jowl to each other. Gaza City is only 75 kilometres from Tel Aviv. However, there is an extraordinary gap in health outcomes between Gaza and Israel, using some common international measuring sticks. These statistics are provided by WHO:

- Life expectancy: 73.1 (Gaza) versus 82.1 (Israel)
- Infant mortality rate: 20 per 1000 live births (Gaza) versus 3 (Israel)
- Maternal mortality rate: 31 per 100,000 births (Gaza) versus 2 (Israel)
- Breast cancer 5-year survival: 65 per cent (Gaza) versus 86 per cent (Israel)

50. The right to health is thus severely restricted for the residents of Gaza. Despite the fact that this is occurring in full view of the international community, the Palestinian authorities, and the Government of Israel, little has been done to alleviate the suffering of Gaza’s people. The reconciliation agreement between Hamas in Gaza and Fatah in the West Bank signed last year has all but ground to a halt<sup>75</sup>. Israel’s obligations, as occupying power, to the residents of Gaza remain far from fulfilled, and the international community takes note of the dire situation of Gaza’s residents, yet fails to act.

## 2. Mental Health

51. Recent health studies in the Occupied Palestinian Territory have found that the cumulative threats to human security for its residents have had a significant and adverse impact upon the psychological well-being among the population.<sup>76</sup> These cumulative threats include traumatic and anxiety-inducing experiences of warfare, home demolitions, imprisonment and beatings, land confiscation and violence arising from demonstrations and settler attacks, as well as the diminished character of life caused by the lack of freedom of movement, food insecurity, the lack of control over water resources, discrimination and statelessness, precarious work and the tottering economy and the mounting poverty rates, all

<sup>69</sup> PHR-I, *supra* note 50.

<sup>70</sup> PHR-I, *Denied 2: Harassment of Palestinian Patients Applying for Exit Permits*; Women’s Centre for Legal Aid and Counselling, *Communication with Special Rapporteur* (February 2018).

<sup>71</sup> <https://www.ochaopt.org/content/only-marginal-improvement-humanitarian-situation-gaza-strip-wake-intra-palestinian>.

<sup>72</sup> PHR-I, *Denied 2: Harassment of Palestinian Patients Applying for Exit Permits*.

<sup>73</sup> WHO, *supra* note 26.

<sup>74</sup> MAP, *supra*, note 27.

<sup>75</sup> <https://reliefweb.int/report/occupied-palestinian-territory/nickolay-mladenov-special-coordinator-middle-east-peace-6>.

<sup>76</sup> WHO, *Health conditions in the occupied Palestinian territory, including East Jerusalem and in the occupied Syrian Golan* (2016): “An increase in the burden of mental and psycho-social disorders can be expected in a population experiencing prolonged occupation, lack of personal security, severe movement restrictions and human rights violations, including displacement in a post-conflict situation.”

of which serve to erode the social fabric of society in the Occupied Palestinian Territory.<sup>77</sup> Above all, the Palestinians lack any collective control over the occupying authority that not only makes virtually all of the decisive political, economic and social decisions which govern their lives, but makes them in a fashion that thwarts their interests and disregards their well-being.

52. According to a 2013 regional study on mental health, the Occupied Palestinian Territory bore the largest burden of mental disorders among the examined countries in the Eastern Mediterranean region.<sup>78</sup> Mental health professionals in the Occupied Palestinian Territory have encountered a steady increase in visits to mental health clinics over the past several years, a rise in personality disorders, and an accretion in impulsive behaviours among the population.<sup>79</sup> A third of patients attending primary health clinics in the West Bank and Gaza were reported to be suffering from mental health issues, a rate that is higher than more politically stable countries.<sup>80</sup>

53. A recent WHO report has stated that mental health workers in the Occupied Palestinian Territory have found that the most common mental health issues are affective disorders, anxiety, depression, epilepsy, aggression, insomnia, neurosis, schizophrenia, total exhaustion, drug-induced conditions and post-traumatic stress disorder (PTSD).<sup>81</sup> Another health study which estimated that the expected population prevalence of post-conflict PTSD and major depression would be close to 30 per cent among Palestinians in the West Bank and Gaza.<sup>82</sup> A noteworthy recent study found that residents of two Palestinian refugee camps in the West Bank reported very high levels of profound psychological distress linked to regular raids by Israeli security forces and their frequent use of tear gas in close quarters against the residents.<sup>83</sup>

54. One significant feature is the relative lack of psychiatric, psychological and counselling services available. The West Bank, with 2.6 million Palestinians, has only one mental hospital, in Bethlehem, with 180 beds. Gaza, with 2 million people, has only a 40-bed hospital. There is only one psychiatric training program in the Occupied Palestinian Territory, and, as of May 2016, there was only one psychiatrist, along with approximately 30 psychologists.<sup>84</sup> A national mental health strategy has been developed by the Palestinian Ministry of Health, and among its goals are the enhancement of resources for the treatment of mental health, improvements in the measurement of mental illness, and an increased focus on public education to challenge the social stigmatization around mental health issues.<sup>85</sup>

### 3. Children

55. The health and social well-being of children are an apt barometer of the larger well-being of a society. Recent studies have reported that food insecurity in the Occupied Palestinian Territory has resulted in worrisome levels of child malnutrition. A 2013 study

<sup>77</sup> C. McNeely et al, "Human Insecurity, chronic economic constraints and health in the occupied Palestinian territory" (2014), 9:5 *Global Public Health* 495-515; S. Hobfoll et al, "The limits of resilience: Distress following chronic violence among Palestinians" (2011), 72:8 *Social Science & Medicine* 1400-1408; Batniji et al, *supra*, note 7.

<sup>78</sup> R. Charara et al, "The Burden of Mental Disorders in the Eastern Mediterranean Region, 1990-2013" (2017), 12(1) *PLoS One*. The authors expressed caution about the full reliability of measurements on mental health in the Occupied Palestinian Territory, given the difficulties in data collection.

<sup>79</sup> WHO, *Health conditions in the occupied Palestinian territory, including East Jerusalem and in the occupied Syrian Golan* (2017).

<sup>80</sup> A. Manenti et al, *Report of a field assessment of health conditions in the occupied Palestinian territory* (WHO, February 2016).

<sup>81</sup> *Ibid.*

<sup>82</sup> D. Canetti et al, "Improving mental health is key to reduce violence in Israeli and Gaza" (2014), 384 *The Lancet* 493-4. This study also noted that the promotion of the mental health of both Palestinians and Israelis is essential to laying the groundwork for peace.

<sup>83</sup> University of California Berkeley Human Rights Center, *No Safe Space: Health Consequences of Tear Gas Exposure Among Palestinian Refugees* (January 2018).

<sup>84</sup> Palestinian Ministry of Health, *The Health Conditions of the Population of Occupied Palestine* (April 2016).

<sup>85</sup> Palestinian Ministry of Health, *National Mental Health Strategy – Palestine, 2015-19* (June 2015).

found disturbing levels of anemia (26.5 per cent across the Occupied Palestinian Territory, and 30.8 per cent in Gaza), vitamin A deficiency (73 per cent across the Occupied Palestinian Territory) and vitamin D deficiency (60.1 per cent across the oPt, and 64.4 per cent in Gaza) among children ages 6 months to 5 years. These micronutrient deficiencies are strongly linked to poverty and poor nutrition. The study also found troubling levels of childhood stunting in the same age cohort: 10.3 per cent across the Occupied Palestinian Territory, and 11 per cent in Gaza. Stunting among young children is a consequence of chronic malnutrition, it is irreversible, and it has adverse life-long effects.<sup>86</sup>

56. A more recent study, conducted in 2014-5, focused on levels of malnutrition among children and their mothers in the Jordan Valley. This study found that 16 per cent of children under 5 years of age covered by the survey were stunted. Half of all the surveyed children (49.3 per cent) were anemic. This study also observed that 87 per cent of the land in the Jordan Valley is under full Israeli military or settler jurisdiction, and Palestinian use of these lands is prohibited; it noted that these structural barriers associated with the occupation significantly affect the overall health status of the surveyed population.<sup>87</sup> While these levels of childhood stunting are highly concerning and are far too prevalent, other studies have indicated that there has been a general decline in the rates of wasting, stunting and underweight.<sup>88</sup> A recent study on water supplies and childhood development has drawn robust links between inadequate access to quality water availability, poverty and physical underdevelopment among Palestinian children living in 52 communities in the Occupied Palestinian Territory.<sup>89</sup>

57. A focused concern in recent medical literature has been on the mental well-being of children in the Occupied Palestinian Territory. A 2007 study that examined 3,415 adolescents living in the Ramallah District of the West Bank found a strong correlation between the humiliation induced by conflict conditions and a high number of subjective health complaints.<sup>90</sup> Chronic exposure to humiliation (defined as the subjective experiences felt by an individual who has been unjustly treated and debased) has been linked to higher levels of insecurity, depression, diminished personal freedom, poorer health, stress and of feeling broken or destroyed among Palestinians in the West Bank.<sup>91</sup> The aftermath of intense warfare fought among dense civilian neighbourhoods has resulted in a high PTSD rate among children in Gaza,<sup>92</sup> with one study estimating that the prevalence of PTSD among children in Gaza even before the destructive wars of the past decade ranged from 23 per cent to 70 per cent.<sup>93</sup> After the 2012 war on Gaza, a study found exceptionally high numbers of children (ages 11-17) experiencing personal trauma (88 per cent), and witnessing trauma experienced by others (84 per cent), all of which raised the potential of depression and PTSD.<sup>94</sup> In a related study, Palestinian mothers in the West Bank have reported that they feel a sense of helplessness, grief and strain on their mental wellbeing in the face of the anxiety and stress

<sup>86</sup> Palestinian Ministry of Health, UNICEF & University of Vienna, *Palestine Micronutrient Survey* (2013).

<sup>87</sup> Palestinian National Institute of Public Health, *Prevalence and Detriments of Malnutrition and Intestinal Infections among Children and their Mothers in the Jordan Valley* (2016).

<sup>88</sup> Manenti et al, *supra*, note 89.

<sup>89</sup> G. Shakhshir, "Association between water supply and early childhood development in Palestine: A descriptive analysis of demographic and health survey data" (2017), 390 *The Lancet* S25.

<sup>90</sup> R. Giacaman et al, "Humiliation: The invisible trauma of war for Palestinian youth" (2007), 121(8) *Public Health* 563-71.

<sup>91</sup> B. Barber et al, "Effect of Chronic Exposure to Humiliation on Wellbeing in the occupied Palestinian territory: An Event-History Analysis" (2013), 382 *The Lancet* S7.

<sup>92</sup> A. Aziz et al, "Trauma, PTSD, Anxiety and Coping Strategies among Palestinian Adolescents Exposed to War on Gaza" (2014), 25(1) *The Arab Journal of Psychiatry* 71-82.

<sup>93</sup> A. Thabet et al, "Exposure to war trauma and PTSD among parents and children in the Gaza Strip" (2008), 17(4) *European Child & Adolescent Psychiatry* 191-199.

<sup>94</sup> B. el-Khodary et al, "The effect of exposure to war-traumatic events, stressful life events and other variables on mental health of Palestinian children and adolescents in the 2012 Gaza war" (2018), 391 *The Lancet* S6. Also see K. Elessi et al, "The effect of the 50-day conflict in Gaza on children: A descriptive study" (2017), 390 *The Lancet* S11.

experienced by their children in an atmosphere of political violence, economic insecurity and frequent threats to their personal safety.<sup>95</sup>

#### 4. Persons with Disabilities

58. Persons with disabilities in the Occupied Palestinian Territory include those who acquired their disability at birth or in childhood, through life activities or during war and conflict. A 2011 survey estimated that approximately 7 per cent of the population in the oPt have a disability, as measured by the international definition of impairment and disability.<sup>96</sup>

59. One particular feature of the challenges of living with a disability in Palestine is the plight of those amputees in Gaza who lost a limb during the 2014 war. The 2014 war resulted in approximately 100 new amputees, adding to the 300 amputees in Gaza wounded by conflict between 2009 and June 2014, according to one study.<sup>97</sup> The same study observed the diminished ability of the Gaza health care system to provide quality care for the new amputees, including: (i) the lack of surgeons to adequately conduct proper limb amputations, (ii) the lack of resources to provide quality prostheses for the amputees, (iii) the destruction of Al-Wafa rehabilitation hospital by Israeli munitions during the 2014 war and the subsequent diminishment of rehabilitation services, (iv) the serious shortfall in rehabilitation beds, (v) the inadequate and insecure funding for rehabilitation services and (vi) the challenges in obtaining a health exit permit from the Israeli authorities to seek rehabilitation services outside of Gaza.

60. Additionally, amputees and others who rely upon wheelchairs or crutches for mobility face the challenges of navigating the ruined and crumbling infrastructure of Gaza. These issues are further compounded given the recent worsening of the electricity crisis. As much of Gaza is densely populated, with buildings having multiple floors, people with disabilities often rely on the use of elevators. With electricity operating only a few hours per day in some cases, simply leaving one's home can be nearly impossible. Similarly, electricity is essential for those who depend on motorized wheelchairs. The ability to participate in public life is seriously affected for these individuals.

#### 5. Palestinian Prisoners in Israeli Detention

61. As of November 2017, the most recent occasion when the Israeli Prison Service released such statistics, nearly 6,000 Palestinians were being held in Israeli prisons for security-related offences, including 425 prisoners held under administrative detention.<sup>98</sup> The Special Rapporteur has previously expressed concern about Israel's use of administrative detention in contravention of international legal obligations, as well as the arrest and detention of children (A/71/554, paras. 18-24).

62. Credible reports of ill-treatment and torture of Palestinian detainees have been made in recent years, including incidents in which detainees have been subjected to sleep deprivation, stress positions and physical beatings.<sup>99</sup> A 2012 health study of a small cohort of prisoners released after a long-term incarceration found that all of them had developed significant physical and psychological issues arising from their imprisonment. The former prisoners described overcrowding, poor nutrition, humidity, pest infestation, denial of family visits, and general lack of hygiene at the prisons.<sup>100</sup> A 2016 study which interviewed a large cohort of released prisoners reported that they suffered long-term effects to their mental

<sup>95</sup> C. Sousa et al, "Mothering within the context of political violence: An exploratory qualitative study of mental health risks and resilience" (2017), 390 *The Lancet* S36.

<sup>96</sup> Palestinian Central Bureau of Statistics, *Disability Survey, 2011* (2011).

<sup>97</sup> PHR-I, *Amputees: The challenges faced by Gaza-Strip amputees in seeking medical treatment* (May 2016).

<sup>98</sup> [https://www.btselem.org/statistics/detainees\\_and\\_prisoners](https://www.btselem.org/statistics/detainees_and_prisoners)

<sup>99</sup> A/HRC/34/38, para. 49.

<sup>100</sup> R. Wahbe, "Physical and mental health of long-term Palestinian political prisoners: A qualitative study" (2012), 380 *The Lancet* S23.



health, with depression, anxiety and psychological distress as the most commonly-reported disorders.<sup>101</sup>

#### IV. Conclusions

63. An occupying power has the duty, under international law, to ensure that the right to health – the enjoyment by the protected population of the highest attainable standard of physical and mental health – is fulfilled during the temporary period of occupation, consistent with its reasonable security needs. While fully respecting its legal obligation not to act covetously towards the territory and resources of the occupied territory, it would actively work to restore and enhance the health care system for the people under its effective control. It would not obstruct the access by patients and medical staff to hospitals and health clinics, either physically or bureaucratically. It would strive to create conditions of stability and security, so that the social determinants of health can advance, rather than retard, the flourishing of physical and mental wellbeing. It would promote equality of access to health care for all, with particular attention paid to the vulnerable and marginalized. The occupying power would actively work with the health institutions of the protected population to chart a progressive health care strategy for the future that also respected the coming restoration of full sovereignty. It would not discriminate. It would not torture or mistreat prisoners and detainees. It would not impose collective punishments of any sort. As a priority, it would provide all the necessary health services and supplies that the medical institutions of the protected population are unable to deliver themselves. Ultimately, the occupying power would understand that leaving behind a thriving health care system, aligned with robust social determinants, at the end of the occupation provides the best opportunity for peace and prosperity to endure.

64. Measured against these obligations, Israel has been in profound breach of the right to health with respect to the Occupied Palestinian Territory. Its avaricious occupation – measured by the expanding settlement enterprise, the annexation of territory, the confiscation of private and public lands, the pillaging of resources, the publicly-stated ambitions for permanent control over all or part of the Territory, and the fragmentation of the lands left for the Palestinians – has had a highly disruptive impact upon health care and the broader social determinants for health for the Palestinians. While the Palestinian Authority (which governs in parts of the West Bank) and the authority in Gaza have some agency over the state of health care in the Occupied Palestinian territory, Israel's conduct of the occupation bears the ultimate responsibility. At the heart of this chasm between the right to health and the harrowing conditions on the ground is what Dr. Paul Farmer has called the pathologies of power: the enormous gap in situations of structured inequality between those who control the power to decide and those without power who must bear the consequences of these rapacious decisions, until some combination of a vision for justice, an organized opposition and the display of an international conscience can bring these disparate relationships to an end. Palestinian, Israeli and international human rights organizations have persuasively demonstrated both the inequities in the health and social conditions in the Occupied Palestinian Territory and their substantive relationship to Israel's occupation. That leaves to the rest of us the obligation to act decisively and effectively.

#### V. Recommendations

65. **The Special Rapporteur recommends that the Government of Israel comply with international law and bring a complete end to its 50 years of occupation of the Palestinian territories occupied since 1967. The Special Rapporteur further recommends that the Government of Israel take the following immediate measures:**

(a) **Comply fully with Security Council resolution 2334 (2016) concerning the settlements;**

<sup>101</sup> Manenti et al, *supra*, note 89.

(b) **Ensure that Palestinian children are treated in accordance with the standards set forth in the Convention on the Rights of the Child, in particular with respect to arrest and detention;**

(c) **End the blockade of Gaza, lift all restrictions on imports and exports, and facilitate the rebuilding of its housing and infrastructure, with due consideration given to justifiable security considerations;**

66. **With respect to the Right to Health, the Special Rapporteur recommends that the Government of Israel immediately take the following measures:**

(a) **To ensure regular and reliable access, at all times, for all Palestinian patients who require specialized health care outside of their jurisdictions, consistent with genuine Israeli security concerns;**

(b) **To end the conditions which obstruct the free passage of Palestinian ambulances to access and transport patients to health care facilities in an expeditious fashion;**

(c) **To ensure the respect and protection of medical personnel and medical facilities as required by International Humanitarian Law;**

(d) **To substantially improve prison conditions and the provision of adequate health care for Palestinian prisoners and detainees;**

(e) **To remove the unnecessary barriers that prevent Palestinian health care staff from acquiring professional training and specialization elsewhere in the Occupied Palestinian Territory and abroad, and to receive training at their home institutions from international health professionals;**

(f) **To ensure that no one is subjected to torture or degrading treatment;**

(g) **To take meaningful steps to improve the many social determinants that influence health outcomes in the occupied Palestinian territory**

(h) **To comply fully with its obligations under international human rights and humanitarian law with respect to fulfilling the health needs of the protected population**

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