

A Message of Solidarity on the 72nd Anniversary Al Nakba Day



**The Question of Palestine in the times of COVID-19:
Position paper on the situation in the
occupied Palestinian territory (No.1)**



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This brief is part of a series that the Global Network of Experts on the Question of Palestine (GNQP) is producing to document the impact of the spread of the COVID-19 (Coronavirus) pandemic on the conditions of Palestinians under Israeli occupation in the Gaza Strip and the West Bank, including East Jerusalem.

Purpose of the brief

The brief connects various facts that demonstrate how the COVID-19 pandemic is aggravating the humanitarian situation of Palestinians in the occupied Palestinian territory (oPt). On the basis of these facts and the applicable norms of international law, the position paper calls for an immediate regional and international mobilization to hold Israel accountable for disregarding its obligations toward the more than five million Palestinians under occupation during the current pandemic.ⁱ

Background

The spread of COVID-19 in Palestine has brought to light pre-existing structural inequalities, prevalent in many countries and especially in places with misallocation and scarcity of resources.ⁱⁱ The result is that poorer and disenfranchised communities suffer disproportionately and are deprived of decent living conditions and often affected by (protracted) conflicts and crises. Like other oppressed communities worldwide, Palestinians, under Israeli occupation since 1967, are confronted not only with having to resist COVID-19 infection, but also with the ongoing need to resist structural oppression that denies their basic rights on a daily basis.ⁱⁱⁱ

Addressing structural oppression and the pandemic simultaneously is imperative to preventing spread of the virus and loss of lives.

In the case of the Palestinians, the continuing lack of full realization of their right to self-determination means that Palestinian communities across the Middle East – i.e. including outside Palestine/Israel – must now contend with the pandemic as people without adequate state infrastructure.

In the oPt, healthcare is administered by the Palestinian Authority (PA) via its Ministry of Health and the Ministry of Health of the de facto authority in Gaza, together with the UNRWA (the latter is also coordinating the pandemic response among Palestinians in Jordan, Lebanon, and Syria). Yet the PA's response is hindered by its limited financial and operational capacity, largely depending on the lack of autonomy and full sovereignty. More specifically, response is limited because of:

(a) Israel's effective control of more than sixty per cent of the West Bank and the blockade of Gaza, that make Palestinian authorities highly dependent on Israeli permissions to (build and) maintain effective medical facilities, including adequate equipment and medical personnel.

(b) The Israeli permit regime that affects the possibility for Palestinians to physically access health facilities, both in/from the West Bank (fragmentized by Israeli-manned roadblocks and checkpoints) and the besieged Gaza Strip.

The COVID-19 crisis has further exposed the fragmentation and subjugation of the Palestinians across the oPt, including in their efforts to prevent the spread of the virus:

Gaza Strip

In the Gaza Strip, the COVID-19 crisis is threatening a population of approximately two million which has been under siege for 13 years. With a collapsing health-care system even before the pandemic, chronically low stocks of essential drugs, and an electricity supply intermittently providing power are cause for an increased vulnerability in face of the virus.^{iv} More so, deep poverty amid appalling socio-economic conditions and precarious health conditions are prevalent in the besieged Strip.

West Bank

In the West Bank, Palestinian residents of urban areas A have not been allowed to travel across the Israeli controlled areas B and C. Simultaneously, Palestinians in areas B and C experience higher restrictions of movements that prevent access to healthcare and other necessary services made available by the PA.^v Beyond this, the PA has enforced strict measures of 'internal' confinement and spread of the disease has so far been successfully contained, notwithstanding increased settler assaults on Palestinians, Israeli Occupation Forces (IOF) incursions, and continued house eviction and demolition orders.^{vi}

East Jerusalem

While the Israeli government prevents the PA from expanding the jurisdiction of its Ministry of Health over Palestinians in East Jerusalem, Palestinians in East Jerusalem are simultaneously denied access to Israeli health facilities.^{vii} Palestinian civil society organizations (CSOs) and other organizations attempting initiatives to provide protective equipment and healthcare, are met with fines and other means to deliberately undermine efforts to support Palestinians in the Old City.^{viii}

In comparison, the healthcare system available to Israeli citizens, with disparities between the Palestinian-Israeli population and the Jewish-Israeli population, offers a high quality of services.^{ix} The inequalities in available healthcare services expose Israel's refusal to take responsibility toward the people it occupies to ensure their health and well-being. The structural inequalities are in turn compounded by Israel's ongoing suppression of the PA and of Palestinians' basic human rights, as detailed in the following section.^x

Current facts on the ground

Since the first reported case of COVID-19 in Israel on 21 February 2020 and in the oPt on 5 March 2020, Israel has consistently violated its obligations to protect and fulfill the right to health of the Palestinian population subject to its control in the oPt.^{xi} It has done so not only by neglecting to provide adequate care to the population under its direct control, but it has also actively constrained the ability of Palestinian health institutions to provide that care.

More specifically:

- *Israel has confiscated and obstructed the delivery of medical supplies and staff by the PA, UNRWA and CSOs:* among others, Israeli authorities have hindered the provision of testing kits, respirators, ventilators, protective equipment and the mobility of medical staff at the service of the Palestinians.^{xii}
- *Israel is failing to effectively test, trace and isolate COVID-19 patients and suspected cases among Palestinians:* approximately 50,000 Palestinian workers from the oPt in Israel have not been tested prior to their return to the oPt while they were made to wait in congested areas at different checkpoints without appropriate protective equipment and social distancing measures.^{xiii}
- *Israel exacerbates the health of Palestinians in Israeli prisons and detention centers:* nearly 5000 Palestinians, including 183 children and 432 administrative detainees, remain in 23 Israeli prisons and detention centers despite urgent calls for release.^{xiv} Of these facilities, 20 are situated inside Israel with families and lawyers prohibited to visit or contact the prisoners. The vulnerability of the prisoners is aggravated because of dismal and unsanitary conditions, including overcrowding, lack of proper ventilation and poor nutrition which puts them at heightened risk of contamination.^{xv}
- *IOF incursions against Palestinian civilians continue despite international calls for a ceasefire during the pandemic:* over 50 injuries and 10 deaths resulted from IOF incursions since 5 March 2020.^{xvi} Additionally, over 60 shootings by the IOF took place, including shootings on Palestinian fisher boats, harming fishermen and a sector that supplies jobs and food in Gaza.^{xvii}

- *Persisting night raids, house evictions and demolitions:* continued night raids, house evictions and thirteen house demolitions since the start of the outbreak in the West Bank, while ‘staying home’ is the global health advice to prevent infection and spread of the virus.^{xviii}
- *Increased settler violence with 78%, disregarding precautionary health measures:* since the start of the outbreak in the West Bank, over 29 cases of assaults on civilians, uprooted and sabotaged olive trees, erected tents, vandalization of public and private properties were reported.^{xix}

Applicable provisions of international law

The current emergency is further exposing the discriminatory and unlawful nature of Israeli policies in the oPt, putting both Palestinians and Israelis at risk of infection and rapid spread of the virus. By not protecting Palestinians against COVID-19 and by not allowing the Palestinians to effectively prevent the spread of the COVID-19 and treat it, Israel is violating the following international legal norms:

International Humanitarian Law

It is recalled that as the Occupying Power, Israel must take all necessary measures to effectively protect Palestinians at the time of the pandemic by:

- *Ensuring hygiene and public health during an epidemic* (Art. 55 and 56 Fourth Geneva Convention).^{xx}
- *Cooperating effectively with the national and local authorities* to protect the population from the virus (Article 56 of the Fourth Geneva Convention).

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- *Maintaining public order, protecting Palestinian life and property from all acts of violence or threats thereof and ensuring the basic needs and welfare of the Palestinian civilian population under its control* (Art. 43, Hague Regulations; Art. 4, 27 and 55 Fourth Geneva Convention).

Human Rights Law

- By virtue of the extraterritorial application of Human Rights obligations, Israel is to ensure that the *right to health is protected, respected and fulfilled: health care is to be available, accessible, acceptable, of adequate quality, and provided without discrimination* (Art. 12 ICESCR; CESCR, General Comment No. 14 (art. 12); Art. 7 UHRD; 24 and 30(d), United Nations Standard Minimum Rules for the Treatment of Prisoners).
- Israel is to respect Palestinians' *right to safe and healthy work conditions and the right to an adequate standard of living* (Art. 7 and 11, ICESCR).
- Palestinians in Israeli prisons have the *right to be visited by and to consult and communicate with their legal counsel and members of their families* and shall be given *adequate opportunity to communicate with the outside world* (18 and 19, Principles of Detention or Imprisonment; 56, 58 and 61, United Nations Standard Minimum Rules for the Treatment of Prisoners).
- *Israel is to ensure accountability for crimes committed against the Palestinians*, including the rights to an effective remedy and equal protection before the law (Art. 26, ICCPR).

International Criminal Law

- The apartheid regime of *systematic oppression and domination by Israel over Palestinians continues to enable crimes against humanity that hinder protection from infection and nullify efforts by the PA to combat the virus* (Art. 7(1)(j), Rome Statute).
- *Israel's negligent behavior towards 5000 Palestinian prisoners in times of a (deadly) pandemic may signal a crime against humanity on political, racial, national or ethnic grounds*. Refusal to release or significantly improve the precarious conditions for Palestinians in Israeli prisons, putting them at a real and imminent danger, demonstrates an intent to harm. (Art. 7(1)(h), Rome Statute)

With regards to Israel's declared intention to spearhead territorial conquest and annexation of portions of the oPt, it is recalled that the annexation of territory is strictly prohibited and no exception or derogation is permitted (The *Charter of the United Nations*, in Article 2(3) and (4)). Territorial acquisition or special advantage resulting from the threat or use of force is illegal (1970 *Declaration on Friendly Relations*, e.g. UNSC Res. 2334 (2016). UNGA Res. 72/14 (2017) and UNHRC Res. 37/36 (2018) and this principle is customary international law as it violates self-determination and erga omnes norms (*Wall Advisory Opinion* (2004), para. 87, 88, 155.)

Recommendations

The above facts and norms expose the nature of Israeli practices in the oPt and their dire impact on the conditions for Palestinians, at a time of heightened risk for their health and that of Israeli society as well. Based thereon, it is recommended that Israel:

- (1) *Undertakes effective monitoring and reporting of COVID-19 spread among Palestinians under its control in the oPt;*
- (2) *Takes preventative measures to ensure safety (social distancing) among Palestinians and adequate treatment including by ensuring access to medical facilities and personnel;*
- (3) *Allows that Palestinian prisoners receive adequate treatment without discrimination and that those with pre-existing medical conditions, the elderly, children and those that committed minor offences are released in line with international recommendations and calls.*
- (4) *Provides, or allows that others do so, medical equipment and technical assistance to Palestinians to cure and prevent further spread of the virus.*
- (5) *Lifts the blockade on Gaza to allow medical supplies and staff to enter.*
- (6) *Undertake effective cooperation with relevant stakeholders (PA, De Facto Authority, UNRWA, and others) to mitigate the risk of spread of the virus into the oPt and protect the health of Palestinian laborers working in Israel.*
- (7) *Allows for provision of economic relief to affected families that suffer from the consequences of isolation, the restriction of movement and loss of income.*
- (8) *Desists from displacement practices of Palestinians through house evictions and demolitions, aggravating the serious circumstances of the pandemic.*
- (9) *Ensures the safety of Palestinians with regard to settler violence in the West Bank and overall IOF incursions against Palestinians and their properties, putting both groups at further risk of contamination of the virus.*
- (10) *Ceases immediately and desists from future plans to advance annexation, and instead turns to measures to cease the occupation of the West Bank and Gaza as the minimum steps to realize self-determination in the oPt. At a time of such heightened risk and suffering for both Palestinians and Israeli, it is immoral to advance plans that may translate into 'political gains' in blatant violation of peremptory norms of international law.*

The Global Network of Experts on the Question of Palestine

The GNQP members consist of leading international academia, lawyers and human rights activists that share their insights and outlooks on predominant legal and political discussions on the Question of Palestine. The establishment of the GNQP is a result of the three-year programme dedicated to the Question of Palestine 70 Years On: Priorities for Action launched in October 2018 by the Arab Renaissance for Democracy and Development (ARDD) with the purpose of strengthening dialogue on Palestine through strategic, innovative and evidence-based advocacy.

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