





Adalah The Legal Center for Arah Minority Bighta in Israel

هسمالسنة السعرة سيز الطالوني العقوق الاقتياب العربية في اسرائيل

والالاقة ممادة محددة محددة المعادة الانتخاب العربية العر

April 7, 2020

To:

Mr. Naftali Bennet Dr. Avichai Mandelblit Mr. Kamil Abu Rukun

Minister of Defense Attorney General Coordinator of Government Activities

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Dear Sirs,

-Urgent-

Re: Israel's obligations to the residents of the Gaza Strip in light of the spread of COVID-19

On behalf of the organizations Al Mezan Center for Human Rights, Adalah - The Legal Center for Arab Minority Rights in Israel and Gisha – Legal Center for Freedom of Movement, we hereby urgently appeal to you with respect to the matter in reference, demanding that you formulate and immediately publish an action plan designed to contend with the spread of COVID-19 in the Gaza Strip. Through this plan you must first and foremost ensure that the medical needs of the population are addressed, as follows:

The global struggle against the spread of COVID-19

- 1. We are in a period of global crisis due to the spread of COVID-19. All countries of the world are formulating action plans to address the emergency situation they now face. States are implementing every possible measure to combat the epidemic and prevent its further spread with the aim of ensuring the health, well-being, and welfare of their citizens.
- 2. According to expert estimates, a considerable proportion of the world's population may be affected by the virus if appropriate measures are not implemented immediately. For example, researchers at the University of Hong Kong and Harvard University have found that, in the absence of a vaccine, at least one quarter to one half of the world's population may be infected with the virus if no measures are taken to prevent its spread. This study also found that about one-fifth of those infected by the virus will have to be hospitalized.¹

¹ Wu, J.T., Leung, K., Bushman, M. *et al.*, "Estimating clinical severity of COVID-19 from the transmission dynamics in Wuhan, China." *Nat Med*, (2020).





Adalah The Legal Center for Arah Minority Hights in Israel همدالسنة الامصراك من قطالوني لعقوق الآمليسية المعروبية في اسرائيل و تعاق م مردد مراحد مراحده المردد المراجعة المراجعة المراجعة المراجعة المراجعة المراجعة المراجعة المراجعة المراجعة

The spread of COVID-19 in the Gaza Strip

- 3. This assessment raises great concern in relation to all countries of the world, but is particularly worrisome in relation to the Gaza Strip. About two million people live in the Gaza Strip, one of the most crowded places in the world. Gaza's population suffers from poor infrastructure, an economy struggling to survive, a lack of social services, and a health system that is on the verge of collapse.
- 4. It has been reported that as of this time, 13 people in Gaza have been diagnosed with COVID-19. There is concern that the number is much higher. This fear arises, *inter alia*, from the small number of tests being conducted in the Gaza Strip due to the acute shortage of test kits.
- 5. The authorities in the Gaza Strip have ordered a reduction in traffic throughout Gaza and have prohibited crowding, including at weddings or funerals, the opening of markets, prayers in mosques and churches, and more. Departure from the Gaza Strip is only permitted in exceptional cases and entry is conditional upon a mandatory stay in a government isolation facility. These are important steps to prevent the spread of the virus, but they do not suffice.
- 6. A situation report written by the United Nations Office for Humanitarian Coordination (OCHA) reveals that the health system in the Gaza Strip is not prepared to cope with the spread of the coronavirus and cannot prepare itself for this situation due to a severe shortage of items vital to the prevention of the spread of the virus. For example, it was reported that due to a shortage of test kits, Gaza Strip authorities were forced to extend the mandatory period of isolation for those entering Gaza from two to three weeks; in addition to the lack of test kits, there is also a severe shortage of personal protective equipment (PPE); other equipment essential for preventing the spread of the disease and infection and for follow up evaluation; respiratory distress medications; ventilators; heart-lung machines; emergency and resuscitation carts; mobile X-ray machines and more. In addition to the severe shortage of medical equipment, the medical teams in the Gaza Strip are contending with a severe shortage of manpower, especially an expert ICU team.

To the report from March 31, 2020: https://reliefweb.int/sites/reliefweb.int/files/resources/sitrep-2-30_march_2020.pdf

7. The state of the health system in the Gaza Strip was extremely problematic even before the COVID-19 epidemic spread. The health system suffers from an acute lack of ventilators which is of particular concern at this moment. According to Palestinian Ministry of Health data, there are only 96 ventilators in the Gaza Strip: 63 in public hospitals, nine in community hospitals, seven in a military hospital, and 17 in private hospitals. Ten of these are out of order and inoperable. Many other types of medical equipment in Gaza hospitals are out of order and cannot be used or repaired owing to the policy of restrictions Israel imposed by Israel.

Israeli control over the Gaza Strip and its implications

8. Although Israel withdrew its military forces from the Gaza Strip in 2005, it still controls Gaza's maritime and air space as well as the passage of people and goods through the Erez and Kerem Shalom crossings. During the many years of Israel's continuous control over the crossings, it deliberately prevented the entry and the exit of equipment and goods from the Gaza Strip, including







medical equipment. By defining a lot of medical equipment as "dual-use" equipment, Israel has attained complete control over the entry (and prevention of entry) of medical equipment and spare parts for such equipment.

- 9. Much of the vital medical equipment in the Gaza Strip is incapacitated because Israel prevented both its transfer from the Gaza Strip for repair and, alongside this, the entry of spare parts needed for repair. Furthermore, through its control over the passage of people and their entry into the Gaza Strip, Israel prevents the entry of expert professionals who can carry out the necessary repairs and provide the much- needed training to Gaza professionals. Israel also imposes severe restrictions on the exit of medical professionals for continuing education programs and training which would enable them to maintain medical equipment in an operational condition over time.
- 10. The permit regime that Israel imposes on the Gaza Strip is characterized by restrictions, and the central principle under which Israel operates is the prohibition of the movement of Palestinians. In this way, Israel has taken, and still takes, an active part in suppressing and preventing the development of the system of health and the economy in the Gaza Strip.² The rounds of violence in recent years and Israeli military operations have directly affected the health system, the economy, and infrastructure in the Gaza Strip, bringing them to the brink of collapse. As a result, many investments and funds from international donors have been devoted to addressing the most basic humanitarian needs, despite their intended allocation for the development of the health care system and the improvement of basic infrastructure in the Gaza Strip.

Israel's obligations to the civilian population in the Gaza Strip

- 11. As aforementioned, the State of Israel controls the crossings to the Gaza Strip and Gaza's airspace and territorial waters (although there are crossings between the Gaza Strip and Egypt, no medications or medical equipment whatsoever are transferred through these crossings). By these and other means, Israel in practice controls key elements of life in Gaza. This continuous and ongoing control, including in the last 15 years, imposes obligations on Israel towards the residents of Gaza pursuant to the laws of occupation of international humanitarian law, international human rights law, and Israeli law.
- 12. Regulation 43 of the annex regulations to the Hague Convention on the Law of War on Land, 1907, imposes an obligation on Israel to ensure the safety and security of the residents of the Gaza Strip. This duty encompasses a variety of topics including health and well-being. Article 55 of the Fourth Geneva Convention (1949) specifically addresses the issue before us and states that "to the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate. The Occupying Power may not requisition foodstuff." This article, therefore, imposes an obligation on the occupying

² Roy, S, "De-development Revisited: Palestinian Economy and Society Since Oslo", **Journal of Palestine Studies**, 28(3), (1999), 64-82.







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power to bring the necessary medical equipment, such as medications and vaccines into the occupied territory when the occupied area's resources do not suffice.³

- 13. Furthermore, Article 56 of the Fourth Geneva Convention expressly refers to the preventive measures necessary to combat the spread of communicable diseases and epidemics:
 - "To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring and maintaining, with the co-operation of national and local authorities, the medical and hospital establishments and services, public health and hygiene in the occupied territory, with particular reference to the adoption and application of the prophylactic and preventive measures necessary to combat the spread of contagious diseases and epidemics."
- 14. These measures include, *inter alia*, the provision of medications, tests and medical disinfectants, the dispatch of medical teams, and the establishment of hospitals and medical centers to assist persons suffering from infectious diseases.⁴
- 15. Article 12 of the International Covenant on Economic, Social and Cultural Rights to which State of Israel is bound imposes on it the obligation to take the necessary measures to ensure, *inter alia*, "the prevention, treatment and control of epidemic, endemic, occupational and other diseases, treatment of these disease and supervision over them" (article 12.2(C) of the Convention). In addition, it must take the steps necessary for the "creation of conditions which would assure to all medical service and medical attention in the event of sickness" (Article 2.12(D) of the Convention).
- 16. The UN Committee on Economic, Social and Cultural Rights published its conclusions in November 2019 following an examination of the state of the Palestinian health system. The Committee expressed its concerns in view of the fact that Palestinians who live in the Occupied Territories, and particularly the Gaza Strip, have very limited and inadequate access to health facilities, apparatus, and health services. This is chiefly due to restrictions on the entry of goods defined by Israel as "dual-use equipment" which include essential medical equipment, and to the permit regime. The Committee recommended to the State of Israel that it, *inter alia*, allow unrestricted access to health facilities and services, including urgent medical services, and permit medical professionals to travel to and from the Gaza Strip.⁵ These recommendations which Israel disregarded derive from its obligation in accordance with the provisions of the Convention that are all the more valid at the present time.
- 17. Alongside Israel's duties under international law, its obligations also derive from High Court of Justice rulings which determined that in light of Israel's ongoing control of the border crossings, and the dependence on Israel that Gaza residents developed in relation to many aspects of life, it is

³ Pictet, J. (Ed.), "The Geneva Conventions of 12 August 1949: Geneva Convention relative to the protection of civilian persons in time of war", **International Committee of the Red Cross**, (1958), (Vol. 4), 314.

⁴ J. Pictet , p. 314.

⁵ Committee on Economic, Social and Cultural Rights: *Concluding Observations on the Fourth Periodic Report of Israel* (E/C.12/ISR/CO/4).







obliged to ensure the humanitarian needs of this population and make certain that its basic rights and needs are respected (HCJ 9132/07 **Albassioni v. the Prime Minister** (published in Nevo, 30 January 2008) and HCJ 201/09 **Physicians for Human Rights v. the Prime Minister** (19 January 2009)). Protection from the spread of the COVID-19 epidemic and the provision of appropriate medical care to those infected with the virus are undoubtedly the most basic humanitarian needs of the residents of the Gaza Strip and, hence, Israel must act to guarantee these.

In light of all of the above, you are requested to urgently formulate and immediately publish an action plan designed to contend with the spread of the coronavirus in the Gaza Strip which will ensure that Israel meets its obligations to the residents of the Gaza Strip and will adequately address the population's medical needs. This plan must include, *inter alia*, the following measures:

- A. Immediately rescinding all existing restrictions on the transfer of medical equipment and spare parts for this equipment from and to the Gaza Strip, including their removal from the dual-use list under the Control Order;
- B. Immediately approving all requests for transfer of medical equipment for repair, whether from the Gaza Strip or to it;
- C. Annulling all restrictions on the passage of medical teams to and from the Gaza Strip, as well as ensuring the passage without delay of Gaza residents in need of medical care for COVID-19 outside the Gaza Strip;
- D. Rescinding all existing restrictions on the transfer of donations and medical equipment from foreign countries and international organizations;
- E. Ensuring the supply of means of protection and preventative equipment necessary to avert the spread of the virus in the Gaza Strip;
- F. Ensuring the supply of the necessary medications and medical equipment for the treatment of COVID-19 patients to hospitals in the Gaza Strip;
- G. When necessary, acting to ensure that health services and medical treatments required to treat COVID-19 are available to Gaza residents.

Sincerely,

Osnat Cohen-Lifshitz, Adv.

Muna Haddad, Adv.

Signature

Signature