



مركز الميزان لحقوق الإنسان
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Human Rights Council Must End Illegal Closure of Gaza as Collective Punishment

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Around the world, COVID-19 has exacerbated situations of institutionalised discrimination, shedding light on structural violence impacting the right to health and denying individuals and peoples their inalienable rights. COVID-19 has brought to the forefront Israel's institutionalised regime of systematic racial domination and oppression over all Palestinians,¹ amounting to the crime of apartheid.² For decades, Israel has entrenched apartheid through the strategic fragmentation of the Palestinian people, including the denial of Palestinian refugee return and the prolonged closure of the Gaza Strip, which has systematically isolated and separated Palestinians in Gaza from the rest of the Palestinian people. This joint written statement to the United Nations (UN) Human Rights Council highlights Israel's illegal closure of Gaza as entrenching apartheid over all Palestinians and calls for effective measures to immediately lift the closure and address root causes.

1. Impact of COVID-19 in the Context of Apartheid

In 2017, the UN Economic and Social Commission for Western Asia found that Israel's strategic fragmentation of the Palestinian people into four separate legal, political, and geographic domains constitutes the main tool for entrenching apartheid over the Palestinian people.³ This fragmentation has been particularly visible during COVID-19: preventing Palestinians from responding to the

¹ Al-Haq, "Israeli Apartheid Undermines Palestinian Right to Health Amidst COVID-19 Pandemic," 7 April 2020, <http://www.alhaq.org/advocacy/16692.html>.

² Article 7(2)(h), Rome Statute of the International Criminal Court.

³ E/ESCWA/ECRI/2017/1, p. 4.

pandemic as a collective, while entrenching their susceptibility as a result of increased movement restrictions hindering access to essential services, including healthcare.⁴

The Palestinian people suffer systematic policies of institutionalised oppression and neglect, resulting in denial of access to adequate water and sanitation,⁵ as well as overcrowding, particularly in Palestinian refugee camps, Israeli prisons and detention centres, and Palestinian neighbourhoods in East Jerusalem, separated from the rest of the city by the Annexation Wall. In Gaza, where some two million Palestinians live in one of the world's most densely-populated areas, the health system already faced collapse before the pandemic, with only four per cent of Gaza's fresh water fit for human use and consumption. Thus, all efforts in Gaza have focused on containing COVID-19 and preventing an uncontrolled and potentially catastrophic spread.

By strategically fragmenting the Palestinian people and the occupied Palestinian territory, Israel ensures that Palestinians are denied the right to exercise any collective rights, including their right to self-determination and the right of Palestinian refugees and displaced persons to return to their homes, lands, and property, of which they have been systematically deprived since 1948.⁶ As such, any genuine response to COVID-19 must not only ensure the fulfilment of the right to health of all Palestinians but effectively address the root causes of continued oppression and domination.⁷

2. Illegality of Israel's closure of Gaza

In addition to ongoing Nakba since 1948, and prolonged occupation since 1967, Gaza has been under intensified closure since 2007, with restrictions on movement and access imposed since the early 1990s.⁸ The international community has widely regarded Israel's closure of Gaza, which enters its 13th year this June, as illegal. In 2013, the UN Secretary-General considered that "the blockade and related restrictions target and impose hardship on the civilian population, effectively penalizing them for acts they have not committed," therefore amounting to collective punishment in violation of Article 33 of the Fourth Geneva Convention.⁹ Israel's closure has deprived the Palestinian people of their means of subsistence, as part of their collective right to self-determination,¹⁰ and amounts to prohibited ill-treatment.¹¹ It further constitutes the crime of persecution,¹² which gives rise to individual criminal responsibility at the International Criminal

⁴ WHO, Monthly Access Report, April 2020,

http://www.emro.who.int/images/stories/palestine/documents/April_2020_Monthly.pdf?ua=1%EF%BB%BF.

⁵ Al-Haq, "On World Water Day, Al-Haq Recalls Israeli Water-Apartheid Amidst a Global Pandemic," 23 March 2020, <http://www.alhaq.org/advocacy/16625.html>.

⁶ Al-Haq, "Palestinian, regional, and international groups submit report on Israeli apartheid to UN Committee on the Elimination of Racial Discrimination," 12 November 2019, <http://www.alhaq.org/advocacy/16183.html>.

⁷ Bram Wispelwey and Amaya Al-Orzza, "Underlying Conditions," LRB, 18 April 2020, <https://www.lrb.co.uk/blog/2020/april/underlying-conditions>.

⁸ Al-Haq, "Gaza Closure Enters its Tenth Year," 19 June 2017, <http://www.alhaq.org/advocacy/6335.html>.

⁹ A/HRC/24/30, para. 22.

¹⁰ Article 1, ICCPR and ICESCR.

¹¹ Article 7, ICCPR; Article 16, CAT.

¹² Article 7(1)(h), Rome Statute of the International Criminal Court.

Court (ICC).¹³ For 13 years, Israel's closure has undermined all aspects of life in Gaza, denying Palestinians the enjoyment of all rights without discrimination. Palestinians in Gaza now face profound levels of poverty, aid-dependency, food insecurity, and unemployment, as well as the collapse of essential services.¹⁴ The UN has repeatedly warned that the Gaza Strip will become uninhabitable by 2020 should Israel fail to lift the closure.¹⁵

3. Failure of third States to act despite calls for lifting the closure

Third States, including Member States of the Human Rights Council, have repeatedly failed to adopt effective measures to end the Gaza closure, to address root causes, and to uphold the inalienable rights of the Palestinian people, despite various UN bodies, experts, and officials, having repeatedly called for Israel's illegal closure of Gaza to be lifted.

In February 2019, the UN Commission of inquiry on the 2018 protests in the occupied Palestinian territory recommended that Israel, the occupying power: "Lift the blockade on Gaza with immediate effect."¹⁶ In March 2019, the UN Special Rapporteur on the situation of human rights in the Palestinian Territory occupied since 1967, Michael Lynk, "endorsed the Commission's call for an immediate lifting of the Israeli blockade of Gaza, which has repeatedly been described ... as a prohibited form of collective punishment."¹⁷ On 22 March 2019, Member States of the Human Rights Council adopted the recommendations of the Commission of inquiry and committed to pursuing their implementation.¹⁸

In November 2019, the Committee on Economic, Social and Cultural Rights urged Israel to "immediately lift the blockade on and the closures affecting the Gaza Strip and provide unrestricted access for the provision of urgent humanitarian assistance."¹⁹ In December 2019, the Committee on the Elimination of Racial Discrimination (CERD) called on Israel to "review its blockade policy and urgently allow and facilitate the rebuilding of homes and civilian infrastructures, ensure access to necessary urgent humanitarian assistance as well as to the right to freedom of movement, housing, education, health, water and sanitation."²⁰ CERD also found that Israel's closure of Gaza is inconsistent with the prohibition on racial segregation and apartheid.²¹

¹³ See Al Mezan, "Palestinian Human Rights Organizations & Victims' Communication to the ICC on the Illegal Closure of the Gaza Strip," 23 November 2016, <http://www.mezan.org/en/post/21630>.

¹⁴ UNCT oPt, "Gaza Ten Years Later," July 2017, https://unsco.unmissions.org/sites/default/files/gaza_10_years_later_-_11_july_2017.pdf.

¹⁵ E.g. TD/B/62/3.

¹⁶ A/HRC/40/74, para. 122(a).

¹⁷ OHCHR, "Accountability needed to end excessive use of force against Palestinian protesters in Gaza, says UN expert," 5 March 2019, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24255&LangID=E>.

¹⁸ A/HRC/RES/40/13.

¹⁹ E/C.12/ISR/CO/4, para. 11(a).

²⁰ CERD/C/ISR/CO/17-19, para. 45.

²¹ Al-Haq, "Human rights organisations welcome Concluding Observations of the UN Committee on the Elimination of Racial Discrimination on racial segregation and apartheid on both sides of the Green Line," 21 December 2019, <http://www.alhaq.org/advocacy/16324.html>.

All High Contracting Parties to the Fourth Geneva Convention have a legal duty under Common Article 1 to “respect and to ensure respect for the ... Convention in all circumstances,” including to bring an end to all forms of collective punishment imposed by Israel, the occupying power, over the Palestinian people. Third States have systematically failed to uphold this obligation.

4. Conclusion and recommendations

Within the context of Israel’s pervasive impunity for widespread and systematic human rights violations committed against the Palestinian people, third States have a responsibility to ensure international justice and accountability. At the Human Rights Council, States must end Israel’s illegal closure of Gaza and address root causes entrenching apartheid over the Palestinian people. Accordingly, we call on the Council and all UN Member States to:

- i. Adopt effective measures to implement Human Rights Council resolution 40/13 within a clear and specified time frame and without any further delay;
- ii. Welcome the forthcoming June 2020 report on collective punishment by the UN Special Rapporteur on the situation of human rights in the Palestinian Territory occupied since 1967, and act to end all forms of collective punishment imposed over the Palestinian people, including Israel’s illegal closure of Gaza;
- iii. Overcome Israel’s strategic fragmentation of the Palestinian people by welcoming CERD’s 2019 concluding observations on Israel,²² which highlighted Israeli policies and practices of racial segregation and apartheid targeting the Palestinian people on both sides of the Green Line;
- iv. Reconstitute the UN Special Committee against Apartheid and the UN Centre against Apartheid and expand the mandate of the UN Special Rapporteur on the situation of human rights in the Palestinian Territory occupied since 1967 to cover the Palestinian people as a whole, on both sides of the Green Line and as refugees and exiles abroad, and call on the Special Rapporteur to report annually to the Human Rights Council and the Third Committee of the General Assembly on steps taken to comply with the terms of the 1973 Apartheid Convention;
- v. Pursue international justice and accountability for suspected crimes committed against the Palestinian people by activating universal jurisdiction mechanisms to try suspected perpetrators in their own jurisdictions and supporting a full, thorough, and comprehensive ICC investigation into the Situation in Palestine.

²² CERD/C/ISR/CO/17-19.