Submission by the Palestinian Center for Human Rights (PCHR) to the Committee on Economic Social and Cultural Rights on Israel. (66th Session, 2019)

1. The Palestinian Center for Human Rights (PCHR), established in 1995, is a non-governmental organization based in the Gaza Strip dedicated to protecting human rights, promoting the rule of law, and upholding democratic principles in the Occupied Palestinian Territory. It holds Special Consultative Status with the Economic and Social Council (ECOSOC) of the United Nations. PCHR works extensively on monitoring and documenting right to health violations faced by the Palestinians in the Gaza Strip and provides legal aid to patients to enable them to travel abroad through Beit Hanoun (Erez) crossing to receive adequate medical treatment. 1

2. This submission relates to Israel’s review by the Committee on Economic, Social and Cultural Rights and focuses on Israel's restrictions on the Palestinian patients’ right to access healthcare in hospitals in the West Bank, including East Jerusalem, Israel, or abroad.

3. Israel has consistently objected to the extraterritorial application of human rights instruments to the Occupied Palestinian Territories. 2 However, it should be noted that the ICJ clearly stated in its 2004 Advisory Opinion on the Wall that Israel as an occupying power is bound by human rights obligations under the International Covenant on Economic, Social and Cultural rights, due to Israel’s exercise of territorial jurisdiction over the Occupied Palestinian Territory. It ruled that Israel is

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1 Beit Hanoun (Erez) crossing is the only operating crossing used for the movement of people between the Gaza Strip and Israel and the West Bank. It is under full Israeli control.

2 United Nations Committee on Economic, Social, and Cultural Rights, ‘Israel's Replies to List of Issues to be taken up in Connection with the Consideration of Israel’s Third Periodic Report concerning articles 1 to 15 of the International Convenot on Economic, Social, and Cultural Rights,’ UN Doc E/C.12./ISR/3(2011), p.4
“under an obligation not to raise any obstacle to the exercise of such rights in those fields where competence has been transferred to Palestinian authorities.”³

4. This position was re-affirmed by the Committee itself when it reiterated that Covenant applies towards all Palestinians in the OPT; “in its view, the State party’s obligations under the Covenant apply to all territories and populations under its effective control.”⁴

**Right to Health (Article 12)**

**Israeli Restrictions on access to Health Care**

5. Gaza’s health sector has been in constant crisis and deterioration due to Israel’s 12-year old crippling blockade which witnessed three military offensives that resulted in extensive damage to vital health infrastructure across the Strip. This left the health sector lacking adequate medical services to cope with the needs of the Strip’s two million residents.⁵

6. Severe restrictions on the import of dual use items, which prohibit the import of certain new medical equipment or spare parts to fix or adequately maintain the equipment have hampered work and development at Gaza’s hospitals and medical centers. Israeli restrictions on freedom of movement have prevented health workers from travelling out to attend conferences and further develop their skills, freezing their surgical practice many years behind the rest of the world. The lack of appropriate infrastructure for healthcare service provision accompanied by insufficient human capital and supplies, together with increasing health risks as a result of growth in food insecurity, poverty, pollution, and lack of access to potable water caused mainly by the blockade further

³ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) ICJ Rep 2004, paragraphs 102 – 113.
⁴ UN Committee on Economic, Social and Cultural Rights (CESCR), UN Committee on Economic, Social and Cultural Rights: Concluding Observations, Israel, 26 June 2003, E/C.12/1/Add.90.
compound the challenges posed by inadequate health infrastructure. As of June 2019, around half of essential medicines were completely depleted in Gaza.\(^6\)

7. The steep decline of Gaza’s local healthcare sector and unavailability of specialized medical services have increased the need for patients to be referred for medical treatment outside of the Gaza Strip in order to access specialized health care in more advanced facilities in the West Bank, including East Jerusalem, and Israel. However, in order to obtain an exit permit, patients have to go through Israel’s vastly complex and stringent system for issuing Gaza exit permits, which as a rule, only allows the entry of life-saving cases and on condition that medical treatment for these cases is not available in Gaza. Patients must first submit a diagnosis to the relevant Palestinian governmental bodies proving their treatment is unavailable in Gaza. Then a Palestinian liaison requests exist permit from the Coordination of Government Activities in the Territories (COGAT), a unit in the Israeli Ministry of Defense that engages in coordinating civilian issues in the Occupied Palestinian Territory. The COGAT reviews the applications and passes them to Israel’s Shin Bet security agency for background checks. This process can take up to several months, and even then some patients maybe unsuccessful securing access to travel for health care.

8. According to information obtained by PCHR from the Ministry of Health, in 2018, Gaza residents submitted 25,877 applications to Israeli authorities to cross Erez/Beit Hanoun crossing to access health care. 15, 820 applications (61.1%) were approved while 10,057 of patients’ applications (38.9%) for permits to exit Gaza were unsuccessful. Among those unsuccessful applications, 1978 applications (7.6%) were rejected on security grounds, 6562 (25.2%) applications received no answer at all or had to undergo further checks by the authorities, 1517 (5.8%) were delayed for reasons such as the need to change companions, incorrect medical information, or that medical treatment is available in the Gaza Strip.\(^7\)

9. From January 2017 until August 2019, PCHR’s Legal Unit received 3873 complaints from patients who were denied exit permits by Israel to access healthcare in hospitals in the West Bank, Israel or abroad. The number of positive replies by the Israeli side as a result of PCHR’s intervention was 1796 (46.3%). However, 1911 complaints received negative replies (49.3%) while 106 (2.7%) were still being followed up during the mentioned period.

10. Reasons for denying patients exit permits to receive health care varies. The patient can be denied based on medical grounds that treatment is available locally and therefore there is no need to travel to Israel. However, if the treatment was available locally the patient would not have obtained a medical referral from the Palestinian side as the process of obtaining it is very strict, complicated, expensive and takes considerable time. The patients' applications has to receive approval from the treating doctor, head of the section at the hospital, the hospital's administration, Service Purchase Unit -Ministry of Health, High Medical Committee, and the Ministry of Health in Ramallah.

11. Another medical ground which results in the refusal of some of the application is that only life-saving cases are allowed to enter. This policy has prevented many patients such as orthopedics and eye patients suffering from serious and intractable illnesses from obtaining exit permits on grounds that the treatment needed affects “quality of life’ and therefore is not of major importance. The criteria for “quality of life’ classification is unknown and leaves patients in a constant state of uncertainty, depriving them of their right to receive treatment.

12. Security reasons constitute other grounds on which patients are denied permits. Until 2017, patients and companions between 16-35 underwent security check up by the Shin Bet. Now, patients and

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9 Ibid 1.

male companions under 55, as well as female companions under 45 must undergo security clearance. This arbitrary process can take weeks and can lead to difficult choices. It has prevented many young mothers from applying as companions to not risk delaying the child’s treatment and instead a grandparent, possibly old and ill, accompanies the child in her stead.

13. Moreover, security-screening does not take into account the appointment of the hospital or the condition of the patient. Missing the appointment means that patients have to reschedule with the medical facility and restart the whole referral process again. Some patients, such as cancer patients, who are in need of a number of consecutive chemotherapy treatment sessions every specific period of time can be denied treatment in the middle or towards the end of the treatment on security grounds. In 2017, WHO reported that 54 patients died while waiting to receive security permits including three children. Approximately 85% of the patients who died while awaiting security permits had been referred for cancer investigations or treatment.  

14. PCHR has documented the arrest of many patients while they were travelling through Beit Hanoun crossing after obtaining their exit permits or crossing to meet Israeli intelligences services to determine whether they would be allowed to travel. Patients were questioned and interrogated for long hours before being arrested despite their poor health. Moreover, some patients were blackmailed by Israeli security officers, who asked the patients to cooperate and provide them with information about certain individuals and places in Gaza in exchange for facilitating his medical treatment process.

15. Ahmed Shbair, a 17-year-old child from Gaza, who needed an urgent cardiac treatment in Israel was denied access by the Israeli authorities to medical treatment in Tel Hashomir hospital in Israel three times in 2016. On 16 November 2016, Ahmed had a security interview with the Israeli intelligence who informed him that receiving medical treatment is conditional upon cooperating with

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12 Ibid 1
the Israeli intelligence service. He replied that he could not cooperate with them because he does not have knowledge of the people and places they asked him about. The investigators told him, “if you do not cooperate with us, let Gaza treat you”. Two weeks later, he applied for an exit permit and the reply was that he is under security check. His situation deteriorated as he started suffering from shortness of breath. He died on 14 January 2017 after several attempts were made to save his life in Gaza hospitals.

16. In January 2017, the Israeli security cabinet passed a resolution, which represents a form of collective punishment, to ban members of Hamas and their first-degree relatives from making humanitarian visits to Israel, including medical treatment visits as means of leverage over Hamas.\(^\text{13}\) The decision was overturned after the High Court of Justice ordered the state to cease this practice following a petition filed by Israeli and Palestinian human rights organizations.\(^\text{14}\) However, since October 2018, in another form of collective punishment, Israel authorities are banning patients from leaving Gaza for medical treatment if they have a relative who moved to the Palestinian Authority area in the West Bank without obtaining an Israeli permission\(^\text{15}\), effectively using the patient as a hostage until his relative, who he or she might not have personal connection with, returns to Gaza.\(^\text{16}\)

Injured Great March of the Return Demonstrators denied access to healthcare:

17. On 30 March 2018, Palestinians launched a massive wave of peaceful weekly demonstrations known as the “Great March of Return” along the security fence separating Gaza from Israel calling for the right of return for Palestinian refugees and the lifting of the blockade imposed on Gaza Strip by Israel for over a decade.\(^\text{17}\)

\(^\text{13}\) The Times of Israel, “Israel to ban all humanitarian visits by Hamas members”, January 2019, available at: https://www.timesofisrael.com/government-to-ban-all-humanitarian-visits-to-israel-by-hamas-members/
\(^\text{14}\) Gisha, “Israel’s High Court https://gisha.org/updates/9489
\(^\text{15}\) Since the second intifada and, in particular, since the Gaza disengagement in 2005, Israel has defined residents of the Gaza Strip who have moved to the territory of the Palestinian Authority in the West Bank as “illegals.”
\(^\text{16}\) Haaretz, “Israel Bars Gazans From Getting Medical Care in West Bank if They Have Relatives Staying There Without a Permit”, https://www.haaretz.com/israel-news/premium-gazan-patients-face-new-limitation-on-travel-for-medical-treatment-1.6573119
18. The Israeli occupation forces (IOF) responded to these demonstrations with excessive lethal force. Since the outbreak of the protests, according to PCHR’s documentation, IOF have killed 208 protesters including 44 children, 2 women, 9 persons with disabilities, 4 paramedics, and 2 journalists, and wounded more than 13,723 others.\textsuperscript{18}

19. Medical treatment for many of those injured is not available in the Gaza. The IOF have been shooting demonstrators with high-velocity weapons fired from a close range, which caused extreme bone and tissue damage as well as large exit wounds which resulted in long term, life changing injuries. As of March 2019, according to PCHR’s documentation, 114 demonstrators have had their lower or upper limbs amputated including 14 children.\textsuperscript{19}

20. Israel has denied the majority of injured demonstrators exit permits to access specialized treatment and more advanced facilities in the West Bank and in Israel citing the demonstrators’ participation in violent acts as a justification. According to data from Gaza’s Coordination and Liaison Office, between 30 March 2018 and 30 April 2019, the Israeli authorities received 550 applications from patients injured in demonstrations to exit Gaza via Erez crossing to access healthcare. Of those applications, only 17\% were approved, 26\% were denied and 56\% were delayed.\textsuperscript{20}

21. The lack of health care in Gaza meant that many wounded protestors could have had their limbs saved if Israel had granted them exit permits. Moreover, clinics in Gaza can provide only the most basic prosthetic legs with limited range of motion. Those injured are in need of limb reconstruction.


\textsuperscript{19} Ibid 17

that fits their physical state, which can require up to seven surgeries and years of rehabilitation. However, many of them are unable to receive the treatment they need due to limited access to health outside Gaza.

22. The UN Commission of Inquiry into Gaza Protests (COI) in its report has recommended that the Government to ensure that all those injured at demonstrations are permitted promote access to hospitals elsewhere in the Occupied Palestinian Territory, in Israel or abroad. It has also called on the Israeli government to remove the prohibition of entry applied to items with legitimate protective and medial uses, including fire component for the treatment of limb injuries as well as ensure timely access of medical and all other humanitarian workers to Gaza to provide treatment to those injured in the context of demonstrations.

**Recommendations:**

PCHR recommends to the Committee that it call upon the government of Israel to:

- Lift the blockade imposed on the Gaza Strip;
- Allow all patients, including injured demonstrators, requiring medical treatment not available in the Gaza Strip to promptly access hospitals elsewhere in the Occupied Palestinian Territory, Israel, and abroad;
- Immediately cease its policy of distinguishing between “lifesaving” cases and cases that affect the patient’s quality of life.
- Allow entry of medical items and equipment as well as spare parts to fix or adequately maintain medical equipment into Gaza, and remove the prohibition of entry applied to items with legitimate protective and medical uses.

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