



مؤسسة لجان العمل الصحي

Health Work Committees

Study on Right to access to health facilities, goods, and services

The Palestinian context (Summary)



March 2018

Introduction

The right to obtain healthcare services is considered crucial for good health. The ability to access health services has deep impact on all aspects of an individual's health. However, Palestinian citizens face a wide range of access obstacles and difficulties.

In this regard, the context in occupied Palestine continues to be affected by the repercussions of those colonial policies that constantly affect health rights, family life, and the overall environment of Palestinian life generally. We should reiterate here the need to understand the environment of the socioeconomic policies reflected in the legislative and policy framework of the Palestinian Authority.

The analysis of health rights can be undertaken by approximating them to structural issues and focusing on the living conditions whether in terms of colonial restrictions and practices, or those associated with the modus operandi of the Palestinian legislative, executive, or judicial institutions especially given their relevance to the private and general context of all health issues. There is a close relationship between the economic and political conditions on the one hand and health conditions on the other. As a result of the Israeli measures, the Palestinian economy suffers from a tangible deterioration in living standards, high rates of unemployment, high level of economic dependence, and increased rate of citizens suffering from poverty. Furthermore, the work structure of official institutions remains lacking in terms of their legislative and executive frameworks and policies to assume responsibility for requirements of healthcare and protection. This study addresses the right to access health services and the obstacles that hamper it. In this context, the researcher presents an analytical framework for the concept of this right, its definition, its main relevant aspects, and its constituting elements by focusing on easy and safe availability or accessibility of health facilities. The study addresses also the centrality and status of this right within the legal and international context on the basis of equality and nondiscrimination, and protection mechanisms of this right within the framework of relevant UN agencies such as the treaty bodies, the Human Rights Council, and specialized agencies such as WHO.

The study focuses also on the status of the right to access healthcare services and the obstacles that undermine this right. It examines the impact of these obstacles on vulnerable and marginalized groups such as women, children, persons with disabilities, and others, in addition to the Palestinians who suffer from marginalization "in Area "C" as classified by the Oslo Agreement. It also focuses on the highly complex conditions that Palestinians in Gaza Strip experience and refers to the Israeli measures as being restrictions to the practice of this right. Furthermore it underscores the impact of the Apartheid Wall, the checkpoints, and the restrictions on citizens' freedom of movement in addition to the blockade imposed on Gaza Strip and the stringent measures for access- ing East Jerusalem. The study examines also the status of the right to health of prisoners and detainees in Israeli jails.

The study sheds light from a critical perspective on the status of the right to access healthcare services in view of the governmental measures, policies, and interventions, the indicators of the right to health in general, and accessibility to these services. This is done by referring to the value of expenditures on this right as well as the government plans and programs in view of the main premise to addressing the concept of the right to health and its accessibility for citizens without obstructions based on a comprehensive rights-based approach rather than the concept of need and charity. This developmental programming overlaps to a large extent with the purposes and intentions of the 17 Sustainable Development Goals (SDGs) and their 169 sub-goals.¹

The study reviews national and international mechanisms for monitoring and safeguarding the right to health as well as the role of these instruments in oversight of the performance of the duty-bearers and the occupying authority in Palestine guaranteeing efforts are made to empower people to access healthcare services, goods, and facilities.

The study concluded with several findings and recommendations especially at the Palestinian governmental level as well as the other actors regarding mechanisms of action and mobilization to advocate and protect this right.

Objective of the Study

The main objective of this research paper is to ascertain the existing situation in Palestine in terms of the right to access health services. Therefore, the study has four subobjectives as follows:

First: identify the conceptual framework for the right to health, its main components, and its relation to the sustainable development frameworks.

Second: identify the normative framework by reviewing and analyzing international agreements and conventions as well as national legislations that stipulated the enforcement of the right to health and access to healthcare services. Additionally, to highlight gaps and flaws within national legislations and assess where these legislations stand in comparison with the international criteria that guarantee the right of citizens to access and attain health services, goods, and facilities.

Third: identify status of accessibility to health services, goods, and facilities in Palestine by reviewing policies and measures taken by the state of Palestine to guarantee this right through studying the policies, strategies, and efforts of the Ministry of Health to overcome the obstacles that hamper Palestinian citizens' access to health services.

Forth: identify international and national protection mechanisms for the right to access and attain health services, goods, and facilities by researching the governmental and non-governmental national protection system,

¹ On 193 ,25/9/2015 countries adopted officially the Agenda of Sustainable Development 2030 which became effective on January .2016 ,1 According to these principles, countries will mobilize their efforts to eliminate all forms of poverty, fight inequality, and address climate change. These goals are not legally binding, and as such governments take ownership over these goals and devise national frameworks to realize them. For more information about the Sustainable Development Agenda 2030, please see <http://www.un.org/sustainabledevelopment/ar/>

as well as the international system of protection through mechanisms and agencies that are specialized in monitoring and overseeing status of human rights including agencies mandated to develop interventions and assess health conditions and the extent to which this system can serve the purpose of protecting the health rights of Palestinian citizens.

Importance of the study

The importance of the study comes from the fact that it is one of very few studies that tried to link the concept of health as a right stipulated by international agreements and conventions and its areas of application on the ground by identifying the gaps within national legislations and policies and the role of main actors in the enforcement of accessibility and availability rights to health services, goods, and facilities, analyzing the obstacles that prevent citizens from accessing these services.

Methodology of the study

The study uses an analytical descriptive methodology that describes and analyzes the facts by relying on secondary sources from previous literature relevant to the topic of the study. The study has five sections: section one addresses the conceptual and normative framework for the right to health. In this section, the study focuses on the evolution of the concept and identifies its main components. In section two, the study presents the international and national regulatory framework that governs the right to health within the framework of international agreements and conventions ratified by the state of Palestine and their implications on the national domestic level. It also reviews and analyzes national laws and legislations that regulate the right to health by identifying the gaps within effective legislations and the extent of their alignment with international agreements. In section three, the study reviews the obstacles that hamper citizens' access to health services by analyzing and discussing the reasons and the conditions that hinder access and attain healthcare services, some of which relate to the responsibility of the Palestinian government, while others will be related to measures by the Israeli military occupation.

Section four of the study addresses the status of the right to access and obtain health services. The section will focus on reviewing the national indicators as an evaluation tool to understand the proper orientation of the health system in Palestine in addition to the ,policies ,measures actors and stakeholders influencing the enforcement of this right. Section five addresses national and international monitoring and proecms of the right to access health services, leading us to pose a range of questions that look into national monitoring and protection mechanisms and extent of their alignment with international mechanisms and safeguards relevant to human rights and basic freedoms.

The study provides a set of conclusions and recommendations that could shed light on the status of the right to access and obtain health services in Palestine. Through this and the review of legal provisions relevant to the topic of the research incorporated in national agreement and conventions as well as in national legislations, as well as review and analysis of Ministry of Health and other organizations' reports, the researcher attempted to find the link and the relation between the normative framework and the practical implementation of this right by depending on available reports, documents and data that could provide significant indicators regarding the extent of enforcement of the right to access and attain health services, goods, and facilities.

Main conclusions

In light of the study presented briefly above regarding the obstacles towards accessing and obtaining health services, goods, and facilities, we can conclude the following:

1. For individuals to enjoy good health, health services should be made available on the basis of equality and non-discrimination. The services should be readily available, can be accessed and used, and to benefit from the comprehensive health coverage so that expenditures on medical treatment do not overburden the citizens.
2. The analytical review of the legal frameworks reveals legal gaps in guaranteeing the right to access health services. The right to health was not stipulated by the Palestinian Basic Law but rather through the law on public health. It was not considered a right such as the right to work and education but was rather limited to a range of services provided to citizens.
3. Failure to align the law on public health and relevant associated legislations with the international agreements and conventions until this date affects negatively the rights of persons with disabilities to access health facilities and obtain appropriate healthcare services and goods. This requires, at a minimum level, that for the time being and until the amendment of the legislations that all necessary measures and regulations are undertaken to guarantee that persons with disabilities enjoy a package of non-discriminatory health services.
4. The occupation measures continue to affect Jerusalem, neighborhoods isolated by the Wall, and "C" areas that lack services due to the restrictions and checkpoints in place. This in turn, limits interaction and safe travel among Palestinian areas thus affecting citizens' accessibility to health services, goods, and facilities in view of the absence of clear national strategies that fill this vacuum by confronting the discriminatory practices of the occupation through filing international complaints or through the development of governmental health interventions to compensate for lack of services in these areas.
5. The occupation authorities' policy of blackmailing Gaza Strip patients and exploiting their need for medical treatment as a trade-off constitutes a blatant violation of the Convention against torture, cruel, inhuman or degrading treatment or punishment.

6. The occupation authorities' continued denial of the prisoners' health rights in view of the Israeli prison administration's neglect of the medical file of prisons and its ongoing evasion of its obligations will increase the already deteriorating health conditions and suffering of the prisoners.
7. Noteworthy is the fact that the budget of the Ministry of Health was not developed using the rights-based approach and lacks indicators for measuring the right to health, particularly in terms of availability of services and quality healthcare. This has prevented the analysis of the programs incorporated within the aforementioned budget in terms of assessing the extent to which the budget enables the right to health and its responsiveness to the international criteria for this right.
8. It is noted also that there are discrepancies and lack of equity in terms of distribution of health services among the different geographical areas, particularly in terms of communities in remote areas outside urban centers.
9. The methodology used for providing health services is still based on traditional models and forms that consolidate an approach of humanitarian medical relief thus contradicting the philosophy of the rights-based developmental approach. This requires the development of knowledge, capacity building, and upgrading of legislations to guarantee the promotion of the rights of persons with disabilities and enable them to access health services. Despite the fact that Palestine has ratified the Convention on the Rights of Persons with Disabilities (CRPD) that adopts a rights-based approach in dealing with the issues related to persons with disabilities, yet the Ministry of Health continues to deal with them as sick people. This contradicts the approaches of the Convention that constructs disability as the result of negative interactions between an individual's impairment and the physical - social or cultural environment.
10. Palestine has a system of health insurance that covers the basket of services listed in the health insurance system. These services are provided by government centers and hospitals, through contracts with private hospitals, and in some cases through contractual arrangements with hospitals outside Palestine to provide some of the services that are not available in the health sector hospitals according to the effective system. However, there are no clear criteria explaining the mechanism of benefiting from this basket of services with the absence of a comprehensive health system that guarantees the continuity of funding, improvement, and development of health services.
11. Absence of a comprehensive monitoring and evaluation system for the health conditions in the Palestinian territories in line with the government strategic plans.
12. Despite the existence of effective health insurance systems in Palestine, yet the benefit to the patients remain minimal and short of meeting the required standard. This exacerbates the suffering of the patients who are overburdened by the costs of medicine that they are forced to buy from outside the health insurance system, or who are forced to pay extra for medical tests or x-rays because they are not available at public hospitals despite having Palestinian health insurance.

13. The status of women indicates the existence of gender-based discrimination and inequity as women do not enjoy the same rights like men. This is due to discriminatory legislations and lack of gender-sensitive policies as well as the sociocultural structure of the Palestinian society.
14. The review of plans and strategies revealed that the vision of the Ministry of Health still focuses on providing health services to married women with the exception of a percentage of women and girls who receive necessary basis health care and services such as ambulance and emergency services.
15. The study concluded that despite the importance of the practical measures taken by the Ministry of Health in addressing citizens' health-related complaints, yet these measures remain insufficient and still suffer from flaws. This requires health sector officials to strengthen accountability and consolidate it as a sustainable approach.
16. The role played by NGOs is still primarily limited, with few exceptions, to provision of humanitarian relief medical services without coherent programs, plans, or strategies that are consistent with the facts and changes that emerged within the Palestinian legal environment following Palestine's ratification of the main human rights conventions. Furthermore, there is the absence of constitutional institutions such as the parliament that is tasked with oversight of the government's performance, passing legislations, policies, and budgets. These realities impose new challenges and open opportunities for NGOs to play a bigger role in this sector.
17. Corruption poses a significant challenge to the provision of good healthcare services that are considered basic for the enjoyment of the right to health, and the fulfillment of the obligation invoked within the framework of Goal 3 of the SDGs that aims at providing health coverage for all. Corruption reflects itself on the context of health service provision to citizens, especially in view of the failure of relevant parties, at the forefront of which is the government, to exert sufficient efforts in terms of accountability and the fighting of corruption within the health sector.

Recommendations

1. Conduct a comprehensive review of the package of relevant legislations starting with the Palestinian Basic Law, to the Law on Public Health and relevant secondary legislations, aligning them with international agreements ratified by the state of Palestine, particularly in terms of article 12 of the International Covenant on Economic, Cultural, and Social Rights (ICECS) and the General Comment number 14 on this article by the Committee on Economic, Cultural, and Social Rights.
2. Introduce substantial amendments to the Law on Public Health to provide for the necessary legal guarantees and safeguards for the citizens' right to access health services and facilities, including issuing the executive regulations for this Law.
3. Take immediate actions to enable citizens to access health services particularly in remote areas and communities by opening clinics and permanent health centers and operationalizing health care services in those areas.

4. Activate accountability measures by the Ministry of Health through effective and serious investigation into the complaints related to violations of the right to health, publishing them and raising awareness about them.
5. The international community should pressure the occupation government to stop its arbitrary practices and discriminatory measures against the citizens, particularly in terms of ending the occupation and the restrictions imposed on citizens especially in Gaza Strip and residents of the so called Area C in order to guarantee their access to health services.
6. Coordinate and unify joint efforts among healthcare service providers and establish a system and effective policies for referrals among them.
7. Conduct survey studies on accessibility and provide the information needed to build a health system that strengthens the concept of comprehensive health coverage.
8. Keep health services out of political polarization and repercussions of the internal Palestinian division to end violations of the right to health, at the forefront of which is the deprivation of Gaza Strip residents from their right to receive medical treatment abroad, to medicines and medical supplies, and accelerate the process of reconciliation.
9. The need to unify governmental and non-governmental efforts in monitoring and evaluation of health conditions of Palestinian residents under the occupation particularly in areas behind the Wall, the so-called Area C, Jerusalem residents, and residents of Gaza Strip. Work on preparing and organizing international lobbying and advocacy campaigns to stop the occupation authorities from moving forward with their arbitrary measures that deprive Palestinians from practicing their health rights.
10. Civil society organizations need to play a bigger role in lobbying the government towards enhancing the right of access, strengthening accountability, and monitor state of Palestine's compliance with its obligations by preparing and submitting shadow reports and interaction with the various UN mechanisms.
11. Civil society organizations should coordinate among themselves in terms of design and implementation of awareness-raising, educational, and capacity-building programs targeting health workers, particularly providers of health services with the purpose of developing a rights-based health system.
12. Raise awareness of citizens of the right to health and the right to accessibility to services and facilities and empower them to resort to national and international protection mechanisms through the adoption by government institutions and nongovernmental organizations of various educational and training policies, programs, and plans to increase awareness for demanding these rights and defending them.
13. Coordinate with parties that handle complaints in terms of referrals and follow up on the cases to achieve complementarity and respond efficiently and practically to solve cases and problems of citizens each in their own field and competency.



14. Allocate budgets that are more equitable in terms of distribution and development to guarantee citizens' access to health services, goods, and facilities by allocating sufficient funds and resources for the benefit of marginalized groups and remote communities, as well as for Jerusalem-based organizations and Gaza Strip, health centers and clinics in the seam zone and near settlement outposts where it is difficult for the residents there to safely access health services, goods, or facilities.
15. Provide a fair national health system that is comprehensive with quality services and minimize the phenomena of commercializing and privatization of health by providing a basket of medical treatment and medicines that meet the needs of the citizens and stop the squandering of money on medical treatment bills abroad.
16. Despite Palestine's accession to international agreements, yet the institutional structure requires further strengthening, development, and enhanced approaches.

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