

Under Occupation: Unprotected and Unvaccinated

Israel's Denial of Equitable Access to
COVID-19 Vaccines in the Occupied
Palestinian Territory

A Briefing Paper
October 2021

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1. Introduction and Summary

Worldwide, the COVID-19 pandemic is having devastating impacts on all spheres of life, including on the economy, social security, education and food production.¹ The ICJ has documented the significant impact on human rights arising from the COVID-19 pandemic from its outset,² including with respect to the right to health.³

As of 29 September 2021, Israel had recorded⁴ about 1,270,230 confirmed cases of COVID-19 and 7,684 reported COVID-related deaths;⁵ the Occupied Palestinian Territory (OPT), comprising the West Bank, including East Jerusalem, and the Gaza Strip, had registered a total of approximately 429,302 confirmed cases of COVID-19, and 4,314 COVID-related deaths.⁶

Many countries' vaccine drives to inoculate their populations against COVID-19 are very advanced. Israel, in particular, has effectively vaccinated the majority of its population, and it is also the first country in the world that has started to administer third booster shots of COVID-19 vaccines, albeit in the face of strong disapproval for doing so.⁷ Tedros Adhanom Gebreyesus, the head of the World Health Organization (WHO), has gone as far as calling on States to place a moratorium on booster shots, stating that "we cannot accept countries that have already used most of the global supply of vaccines using even more of it, while the world's most vulnerable people remain unprotected."⁸

In the OPT, on the other hand, only 26 percent of the population has received the vaccine as of late September 2021, of which approximately 14 percent have been fully vaccinated and 12 percent have received one dose of the vaccine.⁹ Comparing the Israel and OPT figures reveals a stark difference in access to COVID-19 vaccines in the former and the latter.

The UN Committee on Economic, Social and Cultural Rights (CESCR) has highlighted with concern how health-care systems and social programmes across the world have often been ill-equipped to respond effectively and expeditiously to the intensity of the current pandemic due to decades of underinvestment.¹⁰ This observation is especially pertinent for the OPT, where local authorities'

¹ *Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights*, UN Doc. E/C.12/2020/1 (17 April 2020), para. 1.

² ICJ, *Human Rights in the time of COVID-19: Front and Centre – ICJ news, articles, op-eds, legal blogs, videos*, at <https://www.icj.org/human-rights-in-the-time-of-covid-19-front-and-centre/>.

³ Ian Seiderman & Timothy Fish Hodgson, *COVID-19 Symposium: COVID-19 Responses and State Obligations Concerning the Right to Health (Part 1 & 2)*, *Opinio Juris* (1 April 2020), at <http://opiniojuris.org/2020/04/01/covid-19-symposium-covid-19-responses-and-state-obligations-concerning-the-right-to-health-part-1/> and <http://opiniojuris.org/2020/04/01/covid-19-symposium-covid-19-responses-and-state-obligations-concerning-the-right-to-health-part-2/>; ICJ, *Living Like People Who Die Slowly: The Need for Right to Health Compliant COVID-19 Responses* (September 2020), at <https://www.icj.org/wp-content/uploads/2020/09/Universal-Global-Health-COVID-19-Publications-Reports-Thematic-Reports-2020-ENG.pdf>.

⁴ It is worth highlighting that, in general, official figures relating to confirmed COVID-19 deaths are likely to be an undercount, since a number of COVID-19 deaths are not correctly diagnosed and reported, and certain deaths are due to other causes attributable to the overall pandemic situation, e.g., collapse of healthcare systems or diversion of resources. For more information, see Our World in Data, *Excess Mortality during the Coronavirus Pandemic (COVID-19)*, at <https://ourworldindata.org/excess-mortality-covid#excess-mortality-during-covid-19-background>.

⁵ World Health Organization (WHO), *WHO Coronavirus (COVID-19) Dashboard*, at <https://covid19.who.int/table>.

⁶ *Ibid.*

⁷ Sudip Kar-gupta and Caroline Copley, *Ignoring WHO call, major nations stick to vaccine booster plans*, *Reuters* (5 August 2021), at <https://www.reuters.com/world/europe/french-president-macron-third-covid-vaccine-doses-likely-elderly-vulnerable-2021-08-05/>.

⁸ UN News, *WHO calls for moratorium on COVID-19 booster jabs* (4 August 2021), at <https://news.un.org/en/story/2021/08/1097102>.

⁹ Our World in Data, *Coronavirus (COVID-19) Vaccinations*, at <https://ourworldindata.org/covid-vaccinations> (last accessed on 23 September 2021).

¹⁰ CESCR, *Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights*, UN Doc. E/C.12/2020/1 (17 April 2020), para 4.

decades-long, inadequate public expenditure, coupled with Israel's belligerent occupation,¹¹ have left the health-care system in a dire state, with critical shortages in electricity, drugs, specialized medical staff and even drinking water.¹² The UN Office for the Coordination of Humanitarian Affairs (UN OCHA) has reported that the Palestinian health-care system's capacity remains "severely impaired by longstanding challenges and critical shortages", and that "[h]ospitals across the oPt also face shortages of specialized staff in intensive care units."¹³

Israel, as the Occupying Power in the OPT, is legally obligated to respect, protect and fulfill the human rights of Palestinians, including in its response to the COVID-19 pandemic and with respect to their access to vaccines.¹⁴ However, as this briefing paper illustrates, bar the consignment of a few thousands of vaccine doses,¹⁵ Israel has excluded the Palestinian population from its vaccination drive, failing to ensure the equitable distribution of, or access to, COVID-19 vaccines in the OPT. As a result, Israel has violated its obligations under applicable international human rights law (IHRL) and international humanitarian law (IHL).¹⁶

Israel's attitude in this respect is exemplified by the words of the former Health Minister, Yuli Edelstein, who said that on the basis of the so-called Oslo Accords "... Palestinians have to take care of their own health."¹⁷ This position overlooks the fact that, due to the reality of the occupation and the dire state of the health-care system in the OPT, Palestinians cannot "take care of their own health", including with respect to the COVID-19 vaccination campaign. It also is a brazen and willful attempt to circumvent Israel's legal obligation under international law, as the Occupying Power in the OPT, to provide COVID-19 vaccines throughout the entirety of the OPT, given that the local authorities are unable to fulfil the needs of the population.¹⁸ In addition, Palestinian and Israeli human rights organizations have stated that, given the close ties and daily contact between Israelis and Palestinians, "avoiding vaccinating the Palestinians makes little epidemiological sense", and that "these factors turn Israel, East Jerusalem, the rest of the West Bank and the Gaza Strip into a single epidemiological unit in terms of the spread of the pandemic."¹⁹ Similar observations have been made by health experts in Israel.²⁰

In the West Bank, the Palestinian Authority has so far struggled to secure an adequate number of COVID-19 vaccine doses to its population. This failure should be understood in the context of the

¹¹ As highlighted by Physicians for Human Rights Israel, the dire state of the Palestinian health-care system in the West Bank is a direct consequence of Israel's prolonged occupation. See *Responsibility Shirked: Israel and the Right to Health in the Occupied West Bank during Covid-19* (August 2021), at <https://www.phr.org.il/en/this-is-how-israel-evades-its-responsibility-for-palestinians-health-new-report/>, p. 9: "the Palestinian health care system remain[s] poor in financial resources and personnel and lacking in various spheres of medicine and health. The Palestinian Authority [i]s therefore obliged to spend a significant portion of its health care budget on purchasing external health services, including from Israel – a situation which merely compounded the existing budgetary hardship and, in turn, increase[s] dependence on international aid and donations."

¹² Yara Asi, *The Conditional Right to Health in Palestine*, Al-Shabaka (30 June 2019), at <https://al-shabaka.org/briefs/the-conditional-right-to-health-in-palestine/>.

¹³ UN OCHA, *Occupied Palestinian Territory (oPt): COVID-19 Emergency Situation Report 2* (24 March - 31 March 2020), at https://reliefweb.int/sites/reliefweb.int/files/resources/sitrep-2-30_march_2020.pdf, p. 2.

¹⁴ Human Rights Council, *Resolution 46/3: Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice*, UN Doc. A/HRC/RES/46/3 (23 March 2021), para. 10.

¹⁵ Human Rights Watch (HRW), *Israel: Provide Vaccines to Occupied Palestinians* (17 January 2021), at <https://www.hrw.org/news/2021/01/17/israel-provide-vaccines-occupied-palestinians>.

¹⁶ See section 4 below.

¹⁷ BBC News, *Covid-19: Palestinians lag behind in vaccine efforts as infections rise* (22 March 2021), at <https://www.bbc.com/news/55800921>.

¹⁸ See section 2.2 and 3.2 below.

¹⁹ Adalah, *Human rights groups petition Israeli Supreme Court, demand Israel provide vaccines to Palestinians in West Bank and Gaza* (25 March 2021), at <https://www.adalah.org/en/content/view/10279>.

²⁰ Physicians for Human Rights Israel, *Responsibility Shirked: Israel and the Right to Health in the Occupied West Bank during Covid-19* (August 2021), at <https://www.phr.org.il/en/this-is-how-israel-evades-its-responsibility-for-palestinians-health-new-report/>, p. 44.

negative impact of Israel's prolonged occupation on the Palestinian health-care system, particularly in terms of available budget and resources, which has led to a largely ineffective response to the pandemic.²¹ In light of this, Israel has an obligation under both IHL and IHRL to supplement the Palestinian Authority's efforts, and should therefore itself provide all the remaining doses necessary to vaccinate the Palestinian population. Instead, Israel has only vaccinated the residents of the Israeli settlements located in the West Bank, which have been established in violation of international law,²² as well as those Palestinians allowed to work in such settlements or in Israel.²³ This contravenes Israel's obligations under international law, and entrenches Israel's systematic and unlawful discrimination against the Palestinians.²⁴

Following its unlawful annexation,²⁵ Israel has full and exclusive control over East Jerusalem and, therefore, has legal obligation to vaccinate all its Palestinian residents against COVID-19. Whereas part of the Palestinian population of East Jerusalem has been vaccinated, Israel has excluded certain areas – chiefly, the Kufr Aqab neighbourhood and the Shu'fat refugee camp, where around 150,000 people live – from the vaccination roll-out. Residents have had to cross the Qalandiya checkpoint to access vaccination centers, which have been established inside Jerusalem. This journey typically takes hours, and involves passing through strictly-controlled Israeli military checkpoints. The lack of access to COVID-19 vaccines, critically-poor infrastructure and overcrowding render Kufr Aqab and Shu'fat areas where the spread of the virus responsible for the COVID-19 pandemic is extremely high.²⁶ Despite the request by human rights organizations to Israeli health authorities to establish vaccination centres in Kufr Aqab and Shu'fat,²⁷ Israel has failed to fulfill its obligations towards the residents of these two areas.²⁸

In the Gaza Strip, the health-care system is chronically overwhelmed due to Israel's 14-year-old blockade and closure,²⁹ which has not been lifted even during the COVID-19 pandemic, and the widespread destruction of critical infrastructures, such as hospitals, electric power plants, water and sanitation facilities, caused by Israeli forces during the military operations carried out in 2008-2009,

²¹ Ibid., p. 34: "The budgetary shortfalls caused by the ongoing Israeli occupation meant that the Palestinian government faced a severe shortage of medical resources – including ICU beds, tests and other vital equipment – and was compelled to minimize ambulatory medical services."

²² *Convention relative to the Protection of Civilian Persons in Time of War*, 75 UNTS 287 (12 August 1949) (GC IV) (acceded by Israel on 6 July 1951; acceded by Palestine on 2 April 2014), art. 49(6); International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004, para. 120.

²³ Amnesty International, *Denying COVID-19 vaccines to Palestinians exposes Israel's institutionalized discrimination* (6 January 2021), at <https://www.amnesty.org/en/latest/news/2021/01/denying-covid19-vaccines-to-palestinians-exposes-israels-institutionalized-discrimination/>; Hagar Shezaf, *Israel to Vaccinate Palestinian Workers at Settlement and in Checkpoint Starting Sunday*, Haaretz (3 March 2021), at <https://www.haaretz.com/israel-news/israel-to-vaccinate-palestinian-workers-at-settlement-and-in-checkpoint-next-week-1.9587757>.

²⁴ See section 4.1 below.

²⁵ ICJ, *The Road to Annexation: Israel's maneuvers to change the status of the Occupied Palestinian Territory* (November 2019), pp. 9–10, at <https://www.icj.org/wp-content/uploads/2019/11/Israel-Road-to-Annexion-Advocacy-Analysis-brief-2019-ENG.pdf>.

²⁶ Adalah, *Adalah demands Israel provide immediate COVID-19 vaccines for Palestinian Jerusalemites living behind separation wall* (14 January 2021), at <https://www.adalah.org/en/content/view/10224>.

²⁷ Adalah, *Adalah demands Israel provide immediate COVID-19 vaccines for Palestinian Jerusalemites living behind separation wall* (14 January 2021), at <https://www.adalah.org/en/content/view/10224>.

²⁸ See section 4.2 below.

²⁹ Al-Haq, Badil, PCHR, Addamer, CCPRJ, Al Mezan, Cairo Institute, *Joint Parallel Report to the United Nations Committee on the Elimination of Racial Discrimination on Israel's Seventeenth to Nineteenth Periodic Reports* (2019), at http://www.alhaq.org/cached_uploads/download/2019/11/12/joint-parallel-report-to-cerd-on-israel-s-17th-19th-periodic-reports-10-november-2019-final-1573563352.pdf, para. 77: "The term 'closure' denotes the list of Israeli policies and practices beyond the blockade measures that collectively amount to effective control and therefore occupation of the Gaza Strip by the Israeli occupying authorities. These restrictions and enforcements include Israeli administrative control over the Population Registry, telecommunications, water, sanitation, and fuel. The frequent presence of Israeli occupying forces inside the Gaza Strip, conducting incursions and military operations, also attests to Israel's ability to enter the territory at will."

2012, 2014 and 2021. Human rights organizations have denounced Israel's temporary stop, without any apparent reason, of some shipments of vaccine doses intended for frontline health workers and medical staff in the Gaza Strip.³⁰ It has also been reported that Israel might have withheld the approval of vaccine distribution as a way of forcing Hamas to free two Israeli captives and to return the bodies of two Israeli soldiers.³¹ Should those reports prove accurate, such actions would be in breach of Israel's obligation to allow the safe and unimpeded passage of humanitarian consignments, including COVID-19 vaccines, to Gaza, and not to interfere with the right to health of Gazans. Moreover, due to its continued exercise of effective control over Gaza, Israel remains the Occupying Power in the Gaza Strip and, therefore, it has a legal obligation to provide the necessary amount of doses to vaccinate the population.³²

In an attempt to compel Israel to ensure access to COVID-19 vaccines to Palestinians residing in the OPT, six Palestinian and Israeli human rights organizations have petitioned the Israeli Supreme Court, demanding that Israel "take immediate steps to ensure regular supply of vaccines to the Palestinian population under its occupation and ongoing control in the West Bank and Gaza ... [and] transfer its surplus vaccines to the Palestinians immediately."³³ While at the time of writing a Supreme Court's ruling on the petition is still awaited, in-depth analysis by the human rights organization Adalah of the Supreme Court's jurisprudence relating to the COVID-19 pandemic pointed to "the Court's inclination to refrain from intervening in the government's decisions."³⁴ In particular, Adalah stressed that, when called to review potential human rights violations committed by the Government, the Supreme Court "did not exercise its duty to conduct a substantive judicial review and to provide protection for individuals against human rights violations."³⁵ Out of 88 petitions analyzed in Adalah's study, 85 have been rejected on the merits or summarily, or dismissed on procedural grounds, two have been adjudicated in favour of the petitioners, and one is still pending.³⁶ The Israeli Supreme Court has thus shown significant deference towards the Government's actions and decisions during the pandemic, regrettably abdicating its vital role as a check on the abuse of executive power. This has resulted in Israel's COVID-19 responses, including its vaccination rollout, being implemented with little or no possibility of domestic legal accountability.

Overall, Israel's attitude towards COVID-19 vaccine access for Palestinians is therefore a further manifestation of systematic and unlawful discrimination perpetrated against the Palestinians by the Israeli authorities. Palestinians in the OPT, in particular, face the ordinary daily injustices of occupation, which are now compounded by a lack of protection against COVID-19 due to a failing health system and the unavailability of sufficient vaccines. Palestinians in the OPT are therefore living under a triple whammy of occupation, lack of protection and denial of access to vaccines.

The remainder of this briefing paper provides further detail for these conclusions. It analyzes, in section 2 and 3, respectively, Israel's obligations under applicable IHRL and IHL with regard to the duty to ensure access to COVID-19 vaccines to Palestinians in the OPT, and also discusses the Palestinian Authority's and Hamas' human rights obligations in relation to COVID-19 vaccines. In section 4, specific violations connected to the inequitable distribution of and denial of access to COVID-19 vaccines in the West Bank, East Jerusalem and the Gaza Strip are considered. Section 5

³⁰ Al Mezan, *Al Mezan condemns Israel's blocking of COVID-19 vaccine to Gaza* (16 February 2021), at <http://www.mezan.org/en/post/23917/Press+Release%3A+Al+Mezan+condemns+Israel%E2%80%99s+blocking+of+COVID-19+vaccine+to+Gaza+>>.

³¹ Aaron Boxerman, *Knesset debates Palestinian request to allow COVID vaccines into Gaza*, *The Times of Israel* (15 February 2021), at <https://www.timesofisrael.com/knesset-debates-palestinian-request-to-allow-covid-vaccines-into-gaza/>.

³² See section 4.3 below.

³³ Adalah, *Human rights groups petition Israeli Supreme Court, demand Israel provide vaccines to Palestinians in West Bank & Gaza* (25 March 2021), at <https://www.adalah.org/en/content/view/10279>.

³⁴ Adalah, *The Israeli Supreme Court and the COVID-19 Emergency*, (August 2021), p. 34, at <https://mailchi.mp/adalah/adalahs-news-corona-report-august-2021>.

³⁵ *Ibid.*, p. 37.

³⁶ *Ibid.*, p. 34.

concludes by addressing a set of recommendations to the Israeli and Palestinian authorities to ensure their actions or omissions pertaining to COVID-19 vaccine access comply with their respective obligations under international law.

2. International Human Rights Law

2.1. Applicability of International Human Rights Law in the OPT

Both Israel and Palestine are States parties to, among others, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), the International Convention on the Eradication of All Forms of Racial Discrimination (ICERD), and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).³⁷ Under such treaties, they both have human rights law obligations arising from their respective jurisdiction over the OPT.

According to the UN Human Rights Committee, “a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party.”³⁸ The International Court of Justice and UN human rights treaty bodies have found that Israel exercises effective control over the OPT and, therefore, has jurisdiction over it under IHRL.³⁹ This means, in turn, that with respect to the OPT Israel has the obligation to respect, protect and fulfill the whole gamut of human rights guaranteed under applicable human rights treaties by which it is bound and by customary IHRL. The extraterritorial applicability of human rights obligations based on the effective control principle has further been restated in the Maastricht Principles, according to which States’ obligations with respect to economic, social and cultural rights extend to persons and areas over which they exercise effective control,⁴⁰ including occupied territories.⁴¹ The CESCR has clarified that Israel’s obligations under the ICESCR depend on “its level of control and the transfer of authority” relating to the OPT, which translates into a graduation of such obligations in accordance with the level of control exercised in the West Bank, including East Jerusalem, and Gaza.⁴²

Palestine also has certain obligations under applicable IHRL. The Palestinian Authority must respect, protect and fulfill the human rights of Palestinians located in the portions of the West Bank where it exercises a certain degree of authority and control, i.e., Area A and Area B. Pursuant to the 1995 Oslo II Accords,⁴³ the West Bank has been divided into Areas A, B and C.⁴⁴ In Area A, which

³⁷ *International Covenant on Civil and Political Rights*, 999 UNTS 171 (16 December 1966) (ratified by Israel on 3 October 1991; acceded by Palestine on 2 April 2014); *International Covenant on Economic, Social and Cultural Rights*, 993 UNTS 3 (16 December 1966) (ratified by Israel on 3 October 1991; acceded by Palestine on 2 April 2014); *Convention on the Rights of the Child*, 1577 UNTS 3 (20 November 1989) (ratified by Israel on 3 October 1991; acceded by Palestine on 2 April 2014); *International Convention on the Elimination of All Forms of Racial Discrimination*, 660 UNTS 195 (7 March 1966) (ratified by Israel on 3 January 1979; acceded by Palestine on 2 April 2014); *Convention on the Elimination of All Forms of Discrimination against Women*, 1249 UNTS 13 (18 December 1979) (ratified by Israel on 17 July 1980; acceded by Palestine on 2 April 2014).

³⁸ *General Comment No. 31: Nature of the General Legal Obligation on States Parties to the Covenant*, UN Doc. CCPR/C/21/Rev.1/Add.13 (26 May 2004), para. 10.

³⁹ International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004, paras. 110-112; Human Rights Committee, *Concluding Observations: Israel*, UN Doc. CCPR/C/ISR/CO/4 (21 November 2014), para. 5; CESCR, *Concluding observations: Israel*, UN Doc. E/C.12/ISR/CO/4 (12 November 2019), paras. 9, 11; CERD, *Concluding observations: Israel*, UN Doc. CERD/C/ISR/CO/17-19 (27 January 2020), paras. 9-10.

⁴⁰ Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights (2011), available at: https://www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx_drblob_pi1%5BdownloadUid%5D=23, Principle 9.

⁴¹ *Ibid.*, Principle 18.

⁴² CESCR, *Concluding observations: Israel*, UN Doc. E/C.12/ISR/CO/4 (12 November 2019), para. 11. See section 4 below.

⁴³ *Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip* (28 September 1995).

corresponds to about 18 percent of the West Bank, the Palestinian Authority exercises both security and civil control. In Area B, which makes up approximately 22 percent of the West Bank, the Palestinian Authority retains civil control, whereas security falls under joint Israeli-Palestinian management. In Area C, comprising around 60 percent of the West Bank, Israel exercises both civil and security control including planning, building, laying infrastructure and development. Area C is also where Israeli settlements are located.⁴⁵ It is to be noted that Israel, as an Occupying Power, remains fully bound by its international law obligations in the totality of the West Bank, irrespective of any agreed-upon division of tasks with the Palestinian Authority. In addition, despite security control in Areas A and B being assigned to the Palestinian Authority, Israel conducts security operations in those areas at will, demonstrating that it continues to exercise all its prerogatives and powers as the Occupying Power throughout the West Bank.

In the Gaza Strip, Hamas acts as the *de facto* governing authority. Being a non-State actor, it is not formally bound by the ICESCR or other human rights treaties. However, it is to be noted that Hamas has expressly affirmed that it “is committed to the international human rights treaties that have been ratified by Palestine, in particular the ICCPR and the Convention Against Torture.”⁴⁶ Moreover, as underlined by a number of UN Commissions of Inquiry, the exercise of *de facto* governmental-like powers in Gaza makes Hamas “internationally responsible for violations it commits in Gaza, or from within Gaza”,⁴⁷ including with regard to the right to health.

2.2. The Right to Health

Article 12 of the ICESCR obliges States parties to take all necessary measures to respect, protect, and fulfill, namely, to facilitate, provide and promote, “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”⁴⁸ Moreover, article 12 enshrines the obligation of States to take all necessary measures to: a) ensure the “prevention, treatment and control of epidemic, endemic, occupational and other diseases”, which is obviously relevant to the COVID-19 pandemic context; and b) create conditions that “would assure to all medical service and medical attention in the event of sickness.”

The right to health is also guaranteed under the CRC. Article 24 of the CRC provides that “States Parties shall strive to ensure that no child is deprived of his or her right of access to [...] health care services”, particularly “to facilities for the treatment of illness and rehabilitation of health.” Also, States Parties to the CRC “shall pursue full implementation of this right and, in particular, shall take appropriate measures ... [t]o combat disease [...], including within the framework of primary health care, through, inter alia, the application of readily available technology ...”

With regard to COVID-19 vaccines, the CESCR has stressed that the right to health guarantees that “every person has a right to have access to a vaccine for COVID-19 that is safe, effective and based

⁴⁴ HRW, *A Threshold Crossed: Israeli Authorities and the Crime of Apartheid and Persecution* (April 2021), p. 25.

⁴⁵ B'Tselem, *Planning Policy in the West Bank* (6 February 2019), at https://www.btselem.org/planning_and_building.

⁴⁶ Human Rights Watch, *Two Authorities, One Way, Zero Dissent: Arbitrary Arrest and Torture Under the Palestinian Authority and Hamas*, Annex VII: *Unofficial Translation of Letter from Gaza Internal Security to Human Rights Watch* (October 2018), p. 129, at https://www.hrw.org/sites/default/files/report_pdf/palestine1018_web4.pdf.

⁴⁷ *Report of the detailed findings of the independent international Commission of inquiry on the protests in the Occupied Palestinian Territory*, UN Doc. A/HRC/40/CRP.2 (18 March 2019), para. 50 and footnote 39.

⁴⁸ CESCR, *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant)*, UN Doc. E/C.12/2000/4 (11 August 2000), para. 33. The primary rights under the ICESCR, including the right to health, form part of the corpus of general international law or customary international law, and even those States that are not a party to the ICESCR have recognized these rights through their assent to numerous UN General Assembly and Human Rights Council Resolutions and the 1993 Vienna Declaration and Programme of Action. See UN General Assembly, *Vienna Declaration and Programme of Action*, UN Doc. A/CONF.157/23 (12 July 1993), at: <https://www.refworld.org/docid/3ae6b39ec.html>.

on the application of the best scientific developments.”⁴⁹ These are “priority obligations” for States parties to ICESCR, of immediate effect,⁵⁰ and require States to take all necessary measures, including to: (i) ensure that vaccines are available, accessible, acceptable and of adequate quality; (ii) remove any discrimination that acts as a barrier to vaccine access; and (iii) prioritize physical accessibility to vaccines, especially for marginalized groups and people living in remote areas.⁵¹

The CESCR has also emphasized that prioritization of vaccine access within countries “must be based on medical needs and public health grounds.”⁵² Among others, healthcare workers, older persons, persons with existing health conditions, or persons who otherwise experience marginalization should be prioritized.⁵³ Prioritization must also be determined “through a process of adequate public consultation”, be “transparent”, “subject to public scrutiny” and, in the event of dispute, subject to “judicial review to avoid discrimination.” The WHO has further stressed the necessity to make COVID-19 vaccines “a global public good”, meaning “a good that should be available universally because of its critical importance to health.”⁵⁴

UN Human Rights Council Resolution 46/14, adopted on 23 March 2021, has reaffirmed the urgency of ensuring equitable access to COVID-19 vaccines. The Human Rights Council called upon States and relevant stakeholders to take appropriate measures to guarantee the equitable distribution of COVID-19 vaccines, and to remove unjustified obstacles that result in an unequal distribution of the vaccines.⁵⁵

2.3. The Right to Life

Article 6 of the ICCPR guarantees that every human being has the inherent right to life. The UN Human Rights Committee has affirmed that this includes the obligation to ensure “adequate conditions for protecting the right to life”, including “measures designed to ensure access without delay by individuals to essential goods and services such as ... health care.”⁵⁶

In the context of the COVID-19 pandemic, the Human Rights Committee has stressed that States parties to the ICCPR “must take effective measures to protect the right to life and health of all individuals within their territory and all those subject to their jurisdiction.”⁵⁷ This would include

⁴⁹ CESCR, *Statement on universal and equitable access to vaccines for the coronavirus disease (COVID-19)*, UN Doc. E/C.12/2020/2 (15 December 2020), para. 2.

⁵⁰ ICJ, *The Unvaccinated: Equality not Charity in Southern Africa* (May 2021), pp. 10–11, at <https://www.icj.org/wp-content/uploads/2021/05/Africa-The-Unvaccinated-Publications-Reports-2021-ENG.pdf>.

⁵¹ CESCR, *Statement on universal and equitable access to vaccines for the coronavirus disease (COVID-19)*, UN Doc. E/C.12/2020/2 (15 December 2020), paras. 3–4.

⁵² *Ibid.*, para. 5.

⁵³ ICJ, *Living Like People Who Die Slowly: The Need for Right to Health Compliant COVID-19 Responses* (1 September 2020), p. 39, at <https://www.icj.org/wp-content/uploads/2020/09/Universal-Global-Health-COVID-19-Publications-Reports-Thematic-Reports-2020-ENG.pdf>.

⁵⁴ WHO, *WHO SAGE Values Framework for the Allocation and Prioritization of COVID-19 Vaccination* (14 September 2020), p. 6, at https://apps.who.int/iris/bitstream/handle/10665/334299/WHO-2019-nCoV-SAGE_Framework-Allocation_and_prioritization-2020.1-eng.pdf?sequence=1&isAllowed=y.

⁵⁵ Human Rights Council, *Resolution 46/14: Ensuring equitable, affordable, timely and universal access for all countries to vaccines in response to the coronavirus disease (COVID-19) pandemic*, UN Doc. A/HRC/RES/46/14 (23 March 2021), paras. 2–6. See also T. Fish Hodgson and R. De Falco, *Human Rights and Universal Access to COVID-19 Vaccines: Does the Human Rights Council Resolution go far enough?* (23 March 2021), at <https://opiniojuris.org/2021/03/23/human-rights-and-universal-access-to-covid-19-vaccines-does-the-human-rights-council-resolution-go-far-enough/>.

⁵⁶ Human Rights Committee, *General Comment No. 36: Article 6 (Right to Life)*, UN Doc. CCPR/C/GC/35 (3 September 2019), para. 26.

⁵⁷ Human Rights Committee, *Statement on derogations from the Covenant in connection with the COVID-19 pandemic*, UN Doc. CCPR/C/128/2 (30 April 2020), para. 2.

measures necessary to ensure equitable vaccine access for all people because COVID-19 constitutes an immediate and far-reaching threat to life.⁵⁸

2.4. Non-discrimination

Article 2(2) of the ICESCR obligates States parties “to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” The CESCR authoritatively opined that “[a] flexible approach to the ground of ‘other status’ is ... needed in order to capture other forms of differential treatment that cannot be reasonably and objectively justified and are of a comparable nature to the expressly recognized grounds in article 2, paragraph 2”, including, but not limited to, gender identity and sexual orientation, disability, age, nationality, marital and family status, health status, place of residence, and economic and social situation.⁵⁹

Article 5(d)(iv) of the ICERD explicitly provides that the right to “public health [and] medical care” shall be guaranteed to everyone, “without distinction as to race, colour, or national or ethnic origin.” This translates into an obligation for States parties to “prohibit and eliminate racial discrimination in the enjoyment of ... human rights,” including the right to health; it also requires State parties, “[t]o the extent that private institutions influence the exercise of rights or the availability of opportunities, ... [to] ensure that the result has neither the purpose nor the effect of creating or perpetuating racial discrimination.”⁶⁰

In its General Comment No. 14, the CESCR emphasized that States parties have the obligation to ensure equality of access to health-care and health services, with a special obligation to “provide those who do not have sufficient means with the necessary health insurance and health-care facilities.”⁶¹ Moreover, the obligations to “ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups”, and to “ensure equitable distribution of all health facilities, goods and services” are core obligations that States must abide by immediately and at all times to guarantee the right to health.⁶² Core obligations require States parties “to ensure the satisfaction of, at the very least, minimum essential levels” of health-care; they are also non-derogable, which means that a State cannot, under any circumstances, fail to comply with core obligations, even in the context of states of emergency.⁶³

The CESCR defines discrimination as “any distinction, exclusion, restriction or preference, or other differential treatment, that is directly or indirectly based on the prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of Covenant [ICESCR] rights.”⁶⁴ States parties to the ICESCR must therefore adopt all necessary measures to prevent, diminish and eliminate the conditions and attitudes that cause or perpetuate discrimination.⁶⁵ In the context of the COVID-19 pandemic, the CESCR has further affirmed that States parties must take “all the necessary measures, as a matter

⁵⁸ ICJ, *The Unvaccinated: Equality not Charity in Southern Africa* (May 2021), p. 14.

⁵⁹ CESCR, *General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc. E/C.12/GC/20 (2 July 2009), paras. 27–35.

⁶⁰ CERD, *General Recommendation XX on Article 5 of the Convention*, UN Doc. HRI/GEN/1/Rev.6 (8 March 1996), paras. 1, 5.

⁶¹ CESCR, *General Comment No. 14*, para. 19.

⁶² *Ibid.*, para. 43.

⁶³ *Ibid.*, paras. 43, 47.

⁶⁴ CESCR, *General Comment No. 20*, para. 7.

⁶⁵ *Ibid.*, para. 8.

of priority and to the maximum of their available resources, to guarantee all persons access to COVID-19 vaccines, without any discrimination.”⁶⁶

3. International Humanitarian Law

3.1. Status of the OPT under IHL

Since 1967, Israel has held the Palestinian Territory in belligerent occupation, which makes the law of occupation applicable to the West Bank, including East Jerusalem, and the Gaza Strip.⁶⁷ The classification of the Palestinian territory as “occupied” for purposes of IHL applicability has been reaffirmed, among others, by the UN Security Council,⁶⁸ the Conference of the High Contracting Parties to the Fourth Geneva Convention,⁶⁹ the International Court of Justice,⁷⁰ and the Israeli Supreme Court sitting as the High Court of Justice.⁷¹

As mentioned above,⁷² the so-called Oslo Accords (I and II)⁷³ have transferred some control over the West Bank to the Palestinian Authority. In particular, the latter was granted certain control over Areas A and B of the West Bank. Despite such authority transfers, Israel remains an Occupying Power in the totality of the West Bank, to which IHL continues to apply in full.⁷⁴

The law of occupation is also applicable to East Jerusalem, notwithstanding the fact that Israel carried out unilateral acts of purported annexation in 1967 and 1980,⁷⁵ in contravention with international law.⁷⁶ The UN Security Council has on multiple occasions affirmed that “all legislative and administrative measures and actions taken by Israel, including expropriation of land and properties thereon, which tend to change the legal status of Jerusalem are invalid and cannot change that status”, adding that such measures do not affect the continued application of Geneva Convention IV (GC IV).⁷⁷ The International Court of Justice has also confirmed as much.⁷⁸

⁶⁶ CESCR, *Statement on universal and equitable access to vaccines for the coronavirus disease (COVID-19)*, UN Doc. E/C.12/2020/2 (15 December 2020), para. 3.

⁶⁷ The existence of an occupation, within the meaning of IHL, triggers the application of the 1949 Geneva Convention IV, and other rules governing occupation set forth in the Regulations annexed to the 1907 Hague Convention IV, the 1977 Additional Protocol I, when applicable, and relevant rules of customary IHL.

⁶⁸ United Nations Security Council, Resolutions: 242 (1967); 338 (1973); 446 (1979); 452 (1979); 465 (1980); 476 (1980); 478 (1980); 1397 (2002); 1515 (2003); 1850 (2008); 2334 (2016).

⁶⁹ Conference of the High Contracting Parties to the Fourth Geneva Convention Geneva, Declaration (5 December 2001), para. 2, at <https://www.icrc.org/en/doc/resources/documents/statement/57jrqw.htm>.

⁷⁰ International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion (9 July 2004), para. 101; see also paras. 78, 89.

⁷¹ See, among others, *Beit Sourik Village Council v. The Government of Israel et al.*, HCJ 2056/04 (2004), paras. 1, 23.

⁷² See above section 2.1.

⁷³ *Declaration of Principles on Interim Self-Government Arrangements* (13 September 1993); *Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip* (28 September 1995).

⁷⁴ International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004, para. 101.

⁷⁵ *Law and Administration Ordinance (Amendment No. 11) Law* (1967); *Municipal Corporation Ordinance (Amendment) Law* (1967); *Basic Law: Jerusalem, Capital of Israel* (1980); *Basic Law: Israel as the Nation State of the Jewish People* (2018).

⁷⁶ Annexations are an instance of acquisition of territory by force, which is prohibited under the UN Charter; see *Charter of the United Nations*, 892 UNTS 119 (26 June 1945), art. 2(4).

⁷⁷ Security Council Resolution 252, UN Doc. S/RES/252 (21 May 196); Resolution 478, UN Doc. S/RES/478 (20 August 1980).

⁷⁸ International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion (9 July 2004), para. 101.

With respect to the Gaza Strip, Israel maintains that, following the 2005 withdrawal of its military and civilian presence, there can be “no basis for claiming that the Gaza Strip is occupied territory.”⁷⁹ In 2008, the Israeli Supreme Court reiterated that, “since September 2005, Israel no longer has effective control over what takes place within the territory of the Gaza Strip”, and has “no general obligation to care for the welfare of the residents of the Strip.”⁸⁰

Despite such claims, to date, Gaza remains occupied territory for the purposes of IHL, as has been reaffirmed by numerous UN bodies, including the Security Council,⁸¹ the General Assembly,⁸² various Commissions of Inquiry⁸³ and Special Rapporteurs.⁸⁴ Indeed, Israel continues to exercise effective control over the borders, coastline and airspace of the Gaza Strip, as well as over the movements of people and goods into and out of the territory. In addition, Israel maintains effective control over telecommunications, water, electricity and sewage networks, and over the population registry in Gaza.⁸⁵ The Gaza Strip therefore remains under Israeli belligerent occupation.⁸⁶

3.2. Israel’s Obligations under IHL to Ensure Access to Vaccines

Under the law of occupation, Israel has an obligation to guarantee the right to health of the population of the OPT during epidemics.⁸⁷ As such, it must provide Palestinians with, among others, essential primary health care and sanitation without discrimination.

Article 55 of GC IV requires Israel to ensure the necessary medical supplies “[t]o the fullest extent of the means available to it” and, “in particular, bring in the necessary ... medical stores and other articles if the resources of the occupied territory are inadequate.” Article 56 of GC IV, in turn, provides that:

To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring and maintaining, with the cooperation of national and local authorities, the medical

⁷⁹ *The Disengagement Plan – General Outline*, 18 April 2004, at <https://mfa.gov.il/mfa/foreignpolicy/peace/mfadocuments/pages/disengagement%20plan%20%20general%20outline.aspx>.

⁸⁰ *Al-Basyuni v. Prime Minister of Israel*, HCJ 9132/07 (30 January 2008), para. 12. In this judgement, the HCJ further noted the following: “... the primary obligations imposed on the State of Israel regarding residents of the Gaza Strip are derived from the state of warfare that currently ensues between Israel and the Hamas organization which controls the Gaza Strip; these obligations also stem from the degree of control that the State of Israel has at the border crossings between it and the Gaza Strip; and also from the situation that was created between the State of Israel and the territory of the Gaza Strip after years of Israeli military control in the area, following which the Gaza Strip is now almost totally dependent on Israel for its supply of electricity.”

⁸¹ See, among others, Security Council Resolution 1860, UN Doc. S/RES/1860 (8 January 2009); Resolution 2334, UN Doc. S/RES/2334 (23 December 2016).

⁸² See, among others, General Assembly Resolution 72/85, UN Doc. A/RES/72/85 (7 December 2017).

⁸³ *Report of the United Nations Fact-Finding Mission on the Gaza Conflict*, UN Doc. A/HRC/12/48 (25 September 2009), paras. 302–303; *Report of the detailed findings of the Commission of Inquiry on the 2014 Gaza Conflict*, UN Doc. A/HRC/29/CRP.4 (24 June 2015), paras. 39–41; *Report of the detailed findings of the independent international Commission of inquiry on the protests in the Occupied Palestinian Territory*, UN Doc. A/HRC/40/CRP.2 (18 March 2019), paras. 45–48.

⁸⁴ *Situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/72/556 (23 October 2017), para. 56; *Situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/74/507 (21 October 2019), para. 58; *Situation of human rights in the Occupied Palestinian Territory, including East Jerusalem, with a focus on collective punishment*, UN Doc. A/HRC/44/60 (22 December 2020), paras. 58–60.

⁸⁵ *Report of the detailed findings of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1*, UN Doc A/HRC/29/CRP.4 (24 June 2015), paras. 27, 29.

⁸⁶ ICJ, *The Road to Annexation: Israel’s maneuvers to change the status of the Occupied Palestinian Territory* (November 2019), p. 11, at <https://www.ici.org/wp-content/uploads/2019/11/Israel-Road-to-Annexion-Advocacy-Analysis-brief-2019-ENG.pdf>.

⁸⁷ M. Abdallah and V. Todeschini, *The Right to Health in the Occupied Palestinian Territory during the COVID-19 Pandemic*, *Opinio Juris* (19 May 2020), at <https://opiniojuris.org/2020/05/19/the-right-to-health-in-the-occupied-palestinian-territory-during-the-covid-19-pandemic/>.

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* (emphasis added).

This provision places an obligation on Israel to “import the necessary medical supplies, such as medicaments, vaccines and sera.”⁸⁸ Accordingly, Israel must guarantee that the necessary supplies of COVID-19 vaccines be provided to the population of the OPT, particularly where local authorities are unable to secure such supplies, as is presently the case,⁸⁹ and in coordination with the latter. Moreover, Israel must refrain from arbitrarily preventing the delivery of any consignment of vaccines by third parties to the local authorities in the OPT,⁹⁰ including by confiscating any such consignment.

Israel’s legal obligation to distribute medical supplies to the OPT has been recognized in domestic court decisions. In the *Murcus v. Minister of Defense* case, during the Gulf War in 1991, the Israeli Supreme Court ordered the military commander to distribute, quickly and free of charge, gas masks to the Palestinian population in the areas under occupation.⁹¹ As a result of limited protective kits supplies, the Supreme Court requested the military commander to “make every effort to obtain these protective kits as soon as possible”,⁹² emphasizing that the military commander “must not discriminate between residents.”⁹³

4. Israel’s Failure to Ensure Access to COVID-19 Vaccines in the OPT

As mentioned in the introduction, while Israel has conducted an expeditious vaccination campaign of its population,⁹⁴ it has failed to guarantee access to COVID-19 vaccines to the Palestinian population in the OPT. This section details how Israel has failed to ensure the equitable access to and distribution of COVID-19 vaccines in the OPT, thus breaching its obligations under IHRL and IHL.

4.1. West Bank

Local authorities in the West Bank are struggling to secure COVID-19 vaccines on their own.⁹⁵ They have so far relied on the COVAX programme, a global mechanism aimed at delivering COVID-19 vaccines to low- and middle-income countries, and donations from other States to secure COVID-19 vaccines for the Palestinian population.⁹⁶ In March 2021, the State of Palestine received 60,000 doses of the Pfizer and AstraZeneca vaccines from the COVAX programme, and 40,000 doses of

⁸⁸ ICRC, *Geneva Convention IV Commentary of 1958: Article 56*, at <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=7DCE280F4725F96EC12563CD0042C877>.

⁸⁹ See section 4 below.

⁹⁰ GC IV, arts. 23, 55; ICRC Customary IHL Database, rule 55.

⁹¹ *HJ Murcus v. Minister of Defense*, cited in Eyal Benvenisti, *Israel is Legally Obligated to Ensure the Population in the West Bank and Gaza Strip Are Vaccinated*, Just Security (7 January 2021), at <https://www.justsecurity.org/74091/israel-is-legally-obligated-to-ensure-the-population-in-the-west-bank-and-gaza-strip-are-vaccinated/>.

⁹² Cited in *Israel/OPT: UN experts call on Israel to ensure equal access to COVID-19 vaccines for Palestinians* (14 January 2021), at <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26655&LangID=E>.

⁹³ Cited in Eyal Benvenisti, *Israel is Legally Obligated to Ensure the Population in the West Bank and Gaza Strip Are Vaccinated*, Just Security (7 January 2021).

⁹⁴ Niall McCarthy, *Israel’s Vaccine Rollout Successfully Curbs Covid-19 Spread [Infographic]*, Forbes (13 April 2021), at <https://www.forbes.com/sites/niallmccarthy/2021/04/13/israels-vaccine-rollout-successfully-curbs-covid-19-spread-infographic/?sh=be502302d93f>.

⁹⁵ Médecins Sans Frontières, *Vaccines urgently needed as Palestine struggles under surge of COVID-19* (24 March 2021), at <https://www.msf.org/vaccines-needed-palestine-struggles-under-covid-19-surge>.

⁹⁶ Amnesty International, *Denying COVID-19 vaccines to Palestinians exposes Israel’s institutionalized discrimination* (6 January 2021), at <https://www.amnesty.org/en/latest/news/2021/01/denying-covid19-vaccines-to-palestinians-exposes-israels-institutionalized-discrimination/>.

Sputnik V vaccine donated by the UAE.⁹⁷ In April 2021, it received a further 100,000 doses of the Sinopharm vaccine donated by China.⁹⁸ According to the WHO, as of 12 August 2021, local authorities in the West Bank and Gaza have only been able to secure around 1.9 million doses of the COVID-19 vaccine, for a total population of 5.2 million.⁹⁹

On 23 March 2021, the Human Rights Council adopted Resolution 46/3, which called on Israel to “comply immediately with its international law obligations to the protected occupied population, and ensure non-discriminatory access to vaccines.”¹⁰⁰ At domestic level, on 25 March 2021, six Israeli and Palestinian human rights organizations petitioned the Israeli Supreme Court, demanding that Israel take immediate steps to ensure regular supply of vaccines to the Palestinian population in the West Bank and Gaza.¹⁰¹ The petitioners also requested that Israel transfer its surplus vaccines to Palestinians immediately.¹⁰² The petitioners submitted that Israel had not equitably included the Palestinian population as part of their vaccine allocation programme, leaving Palestinians in the OPT with an insufficient number of vaccine doses on top of the already struggling health-care infrastructure.¹⁰³ As of the time of writing, the Supreme Court has yet to rule on the petition.

On 18 June 2021, Israel and the Palestinian Authority reached an agreement pursuant to which Israel would transfer to the Palestinian Authority between 1 million and 1.4 million doses of the Pfizer vaccine presently in stock in Israel.¹⁰⁴ However, just hours later, the Palestinian Authority canceled the agreement and sent back about 100,000 doses that Israel had delivered earlier in the day, on the basis that the specifications of the doses did not conform to the agreement, and that they were too close to their expiration date to be administered in time.¹⁰⁵ In response to the cancellation, Israeli officials stated that the doses were “identical in every way to the vaccines currently being given to citizens of Israel”, and that the Palestinian Authority knew in advance of the doses’ expiration date.¹⁰⁶ In the meantime, the media have reported that Israel intends to transfer its surplus of vaccine doses to other States, and even, possibly, discard millions of surplus vaccines.¹⁰⁷

⁹⁷ UNICEF, *Arrival of first wave consignment of COVAX COVID-19 vaccine doses to the State of Palestine* (21 March 2021), at <https://www.unicef.org/press-releases/arrival-first-wave-consignment-covax-covid-19-vaccine-doses-state-palestine>; Nidal al-Mughrabi, *Palestinians receive 40,000 COVID-19 vaccines from UAE*, Reuters (11 March 2021), at <https://www.reuters.com/article/us-health-coronavirus-palestinian-rivals-idUSKBN2B32GM>.

⁹⁸ Reuters, *Palestinians get Chinese-donated COVID-19 vaccines* (29 March 2021), at <https://www.reuters.com/article/us-health-coronavirus-palestinians-vacci-idUSKBN2BL24D>.

⁹⁹ WHO, *Coronavirus disease 2019 (COVID-19) Situation Report 79* (12 August 2021), at <https://who18.createand.com/campaigns/reports/viewCampaign.aspx?d=j&c=99FA4938D049E3A8&ID=2BED95B7C1CE38242540EF23F30FEDED&temp=False&tx=0&source=Report>; United Nations Population Fund, *World Population Dashboard - Palestine*, at <https://www.unfpa.org/data/world-population/PS>.

¹⁰⁰ Human Rights Council, *Resolution 46/3: Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice*, UN Doc. A/HRC/RES/46/3 (23 March 2021), para. 18.

¹⁰¹ Adalah, *Human rights groups petition Israeli Supreme Court, demand Israel provide vaccines to Palestinians in West Bank & Gaza* (25 March 2021), at <https://www.adalah.org/en/content/view/10279>.

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ Israel Prime Minister’s Office, *Israel and the Palestinian Authority Agree on Coronavirus Vaccines Exchange Deal* (18 June 2021), at https://www.gov.il/en/departments/news/spoke_vaccines180621.

¹⁰⁵ Patrick Kingsley, *Israeli-Palestinian Vaccine Deal Collapses Amid Expiry Date Dispute*, The New York Times (18 June 2021), at <https://www.nytimes.com/2021/06/18/world/middleeast/israel-palestine-vaccine-deal.html>.

¹⁰⁶ Times of Israel, *Israel insists vaccine shipment rejected by Palestinians “perfectly sound”* (19 June 2021), at <https://www.timesofisrael.com/israel-insists-vaccine-shipment-rejected-by-palestinians-perfectly-sound/>.

¹⁰⁷ Lazar Berman, *Israel may toss millions of vaccines. Why won’t it give them to the PA instead?*, The Times of Israel (5 May 2021), at <https://www.timesofisrael.com/israel-may-toss-millions-of-vaccines-why-wont-it-give-them-to-the-pa-instead/>.

As of August 2021, Israel had vaccinated approximately 68% of its overall population.¹⁰⁸ This roll-out plan covered Israeli settlers living inside the West Bank,¹⁰⁹ but did not include the vast majority of Palestinians living in the occupied West Bank.¹¹⁰ Israel has not enacted a comprehensive, equitable plan to vaccinate the Palestinians in the West Bank, so far only allocating vaccines for Palestinians with permits to work in Israel and in Israeli settlements in the West Bank.¹¹¹

The former Health Minister of Israel, Yuli Edelstein, has claimed that Israel has no obligation to provide vaccines to the OPT under the Oslo Accords.¹¹² Article VI(2) of the Oslo I Accord transferred authority over public health in the West Bank and the Gaza Strip to the Palestinian Authority.¹¹³ Article 17 of the Oslo II Accord provides that “[p]owers and responsibilities in the sphere of Health in the West Bank and the Gaza Strip will be transferred to the Palestinian side”, including vaccinations. Article 17 further states, at paragraph 6, that “Israel and the Palestinian side shall exchange information regarding epidemics and contagious diseases, shall cooperate in combating them and shall develop methods for exchange of medical files and documents”; and, at paragraph 7, that “[t]he health systems of Israel and of the Palestinian side will maintain good working relations in all matters, including mutual assistance in providing first aid in cases of emergency, medical instruction, professional training and exchange of information.”

It is therefore clear that article 17 of the Oslo II Accord places a general obligation of cooperation between Israel and the Palestinian Authority in the context of health-care provision, which becomes particularly important in light of the Palestinian Authority’s inability to tackle the COVID-19 pandemic effectively, and to adequately protect the right to health of Palestinians. Moreover, the Oslo Accords qualify as “special agreements” under article 7 of GC IV, which provides that “[n]o special agreement shall adversely affect the situation of protected persons, as defined by the present Convention, nor restrict the rights which it confers upon them.” This means that Israel cannot derogate from its obligations under IHL by means of the Oslo Accords, as also highlighted by two UN Special Rapporteurs.¹¹⁴ While pursuant to the Oslo Accords the Palestinian Authority is responsible for the day-to-day management of the health sector in the West Bank, such agreements do not relieve Israel of its obligations under IHL and IHRL towards Palestinians.

Similarly, by virtue of the effective control exercised over the West Bank, including Areas A and B, which are formally under the Palestinian Authority’s control, Israel maintains its obligations to respect, protect and fulfill the human rights of Palestinians under IHRL, including:

- **Obligation of non-interference:** Israel has a duty “not to raise any obstacle to the exercise of such rights in those fields where competence has been transferred to

¹⁰⁸ Our World in Data, *Coronavirus (COVID-19) Vaccinations* (updated as of 24 August 2021), at <https://ourworldindata.org/covid-vaccinations>.

¹⁰⁹ It should be recalled that the establishment of Israeli settlements in the West Bank amounts to a violation of article 49(6) of GC IV, which prescribes that “[t]he Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.” See ICJ, *The Road to Annexation*, pp 12 ff.

¹¹⁰ Amnesty International, *Denying COVID-19 vaccines to Palestinians exposes Israel’s institutionalized discrimination* (6 January 2021), at <https://www.amnesty.org/en/latest/news/2021/01/denying-covid19-vaccines-to-palestinians-exposes-israels-institutionalized-discrimination/>.

¹¹¹ Hagar Shezaf, *Israel to Vaccinate Palestinian Workers at Settlement and in Checkpoint Starting Sunday*, Haaretz (3 March 2021), at <https://www.haaretz.com/israel-news/israel-to-vaccinate-palestinian-workers-at-settlement-and-in-checkpoint-next-week-1.9587757>.

¹¹² BBC News, *Covid-19: Palestinians lag behind in vaccine efforts as infections rise* (22 March 2021), at <https://www.bbc.com/news/55800921>. See also Physicians for Human Rights Israel, *Responsibility Shirked: Israel and the Right to Health in the Occupied West Bank during Covid-19*, p. 42.

¹¹³ *Declaration of Principles on Interim Self-Government Arrangements*, 13 September 1993, Article VI(2).

¹¹⁴ OHCHR, *Israel/OPT: UN experts call on Israel to ensure equal access to COVID-19 vaccines for Palestinians* (14 January 2021), at <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26655&LangID=E>. See also Physicians for Human Rights Israel, *Responsibility Shirked: Israel and the Right to Health in the Occupied West Bank during Covid-19*, p. 39.

Palestinian authorities”,¹¹⁵ i.e., it must not interfere with the Palestinian Authority’s attempt to secure COVID-19 vaccine doses, for instance by impeding their import into the West Bank.

- **Obligation of provision:** to the extent that the Palestinian Authority is unable, financially or otherwise, to secure the necessary number of doses to vaccinate the whole population of the West Bank, Israel has an obligation to itself provide such vaccines under articles 55 and 56 of GC IV, and article 12 of the ICESCR.

By not providing COVID-19 vaccines to Palestinians residing in the West Bank, Israel has breached its obligations under applicable IHL and IHRL. Additionally, the more favourable treatment provided to Israeli residents of the West Bank, than to Palestinians, amounts to prohibited discrimination, based on racial, national or ethnic origin, in breach of article 2(2) of the ICESCR and article 5(e)(iv) of the ICERD.

4.2. East Jerusalem

In occupied East Jerusalem, all Palestinians who have Israeli residency status¹¹⁶ are in principle entitled to be vaccinated by Israel, as is the medical staff working at the six Palestinian hospitals located in this part of the city – many of whom come from other parts of the West Bank and Gaza.¹¹⁷ However, following its plans to redesign the demographic composition of East Jerusalem in favour of Jewish residents,¹¹⁸ Israel has implemented laws, policies and practices aimed at excluding certain areas where Palestinians live from the services to which residents of Jerusalem are entitled, including access to prevention and treatment of COVID-19.¹¹⁹

In particular, the neighbourhood of Kufr Aqab and the Shu’fat refugee camp – where around 150,000 Palestinians live, and which administratively fall within the boundaries of the Jerusalem municipality, as unlawfully annexed and expanded by Israeli authorities since 1967¹²⁰ – have been cut off from East Jerusalem through the construction of the Separation Wall and its associated regime of checkpoints and permits. These two neighborhoods are fully hemmed in by the Separation Wall, which runs south to the Qalandiya checkpoint, the main crossing between Ramallah and Jerusalem, which Kufr Aqab residents, the majority of whom are residents of Jerusalem, must cross to reach the rest of Jerusalem.¹²¹ According to a report by Human Rights Watch, Israel has effectively abandoned governing and enforcing law in Kufr Aqab and Shu’fat,

¹¹⁵ International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion (9 July 2004), para. 112; CESCR, *Concluding Observations: Israel*, UN Doc. E/C.12/ISR/CO/3 (16 December 2011), para. 8.

¹¹⁶ Since the unlawful annexation of East Jerusalem in 1967, Palestinians living in the city are granted the status of “permanent residents” based on the Entry into Israel Law (1952), being thus equated to foreigners living in Israel. Such status is revocable and, as of May 2019, 14,643 Palestinians have had their permanent residency revoked. See B’tselem, *Statistics on Revocation of Residency in East Jerusalem*, at www.btselem.org/jerusalem/revocation_statistics.

¹¹⁷ BBC, *Covid-19: Palestinians lag behind in vaccine efforts as infections rise* (22 March 2021), at <https://www.bbc.com/news/55800921>.

¹¹⁸ Since the 1980s, successive master plans have been drafted with the aim of fragmenting Palestinian neighbourhoods with intervening Jewish ones. The so-called “Jerusalem 2000” master plan aimed to achieve a 60/40 demographic balance in favour of Jewish residents in Jerusalem. *Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem* A/HRC/22/63 (2013), para. 25. The CERD has called on Israel “to eliminate any policy of ‘demographic balance’ from its Jerusalem Master Plan”, as it constitutes violation of applicable IHRL and IHL. See *Concluding Observations: Israel* CERD/C/ISR/CO/14-16 (2012), paras. 4, 25; *Concluding Observations: Israel* CERD/C/ISR/CO/17-19 (2019), para. 4.

¹¹⁹ M. Abdallah and V. Todeschini, *The Right to Health in the Occupied Palestinian Territory during the COVID-19 Pandemic*.

¹²⁰ HRW, *A Threshold Crossed: Israeli Authorities and the Crime of Apartheid and Persecution* (April 2021), p. 118.

¹²¹ *Ibid.*, pp. 119–20.

leading in turn to significantly degraded or entirely non-existent public infrastructures, services and critical resources, such as running water and electricity.¹²²

On 14 January 2021, the human rights organization Adalah sent an urgent letter to Israeli health officials demanding that they provide COVID-19 vaccines for the residents of Kufr Aqab and Shu'fat.¹²³ The letter stated that Israel had not established any COVID-19 vaccination stations to serve the 150,000 residents of these areas. Residents have had to cross the Qalandiya checkpoint to access vaccination centers, which have been established inside Jerusalem. This journey typically takes hours, and involves passing through strictly-controlled Israeli military checkpoints, which particularly affects Palestinian women, children and the elderly.¹²⁴ The lack of access to COVID-19 vaccines, critically poor infrastructure and overcrowding render Kufr Aqab and Shu'fat areas where the spread of the virus responsible for the COVID-19 pandemic is extremely high.¹²⁵

With respect to East Jerusalem, including Kufr Aqab and Shu'fat, Israel has full responsibility to abide by the whole range of obligations under applicable IHL and IHRL. Since 1967, Israel governs East Jerusalem as it was its own territory, bringing this area under its exclusive effective control. Unlike the rest of the West Bank, in fact, East Jerusalem was not included in the authority transfers to the Palestinian Authority provided for in the Oslo Accords.

Because of the exercise of such *de facto* effective control, Israel is obligated to afford Palestinian residing within the whole Jerusalem municipality the entire gamut of human rights, including the right to health, deriving from applicable human rights treaties, including the ICESCR, the ICCPR, the ICERD, the CRC and the CEDAW. Moreover, as an Occupying Power, it must provide the Palestinian population with all necessary medical facilities and services, as required under article 55 and 56 of GC IV.¹²⁶ It follows that Israel has the obligation to ensure that Palestinians, who are residents of East Jerusalem, including Kufr Aqab and Shu'fat, have full access to COVID-19 vaccines without discrimination.

By failing to provide such vaccines, and any COVID-19-related treatment, to Palestinians on an equal footing with the other residents of Jerusalem, Israel has violated its obligations under article 12 of the ICESCR and articles 55 and 56 of GC IV. Moreover, any unlawful discrimination vis-à-vis Palestinians, based on racial, national or ethnic origins, in the context of Israel's failure to ensure access to vaccines to Palestinians, constitutes a violation of article 2(2) of the ICESCR and article 5(e)(iv) of the ICERD. Any discrimination towards the residents of Kufr Aqab and Shu'fat is also not in compliance with article 27 of GC IV, which prohibits differential treatment among protected persons.

4.3. Gaza

Gaza's health system is overwhelmed due to chronic drug shortages and inadequate equipment,¹²⁷ as well as the widespread damages to health-care infrastructures caused by Israeli forces during

¹²² Ibid., p. 124.

¹²³ Adalah, *Adalah demands Israel provide immediate COVID-19 vaccines for Palestinian Jerusalemites living behind separation wall* (14 January 2021), at <https://www.adalah.org/en/content/view/10224>. At the time of writing, the ICJ is not aware of any action undertaken by Israeli authorities to follow up on Adalah's letter.

¹²⁴ Ibid.

¹²⁵ Ibid. The lack of access to COVID-19 vaccines in Palestinian neighborhoods located beyond the Separation Wall has led to deadly consequences. Despite Israel began to vaccinate Palestinians in East Jerusalem in March 2021, Palestinian neighbourhoods in Jerusalem saw a sharp spike in the positive rates of COVID-19, worsened by the spread of highly transmissible COVID-19 variants. See Aaron Boxerman, *In East Jerusalem, vaccine turnout climbs — but lags behind infection rates*, The Times of Israel (1 March 2021), at <https://www.timesofisrael.com/in-east-jerusalem-vaccine-turnout-climbs-but-lags-behind-infection-rates/>.

¹²⁶ See section 3.2 above.

¹²⁷ UN OCHA, *Response to the escalation in the oPt | Situation Report No. 1 (21-27 May 2021)* (27 May 2021), at <https://www.ochaopt.org/content/response-escalation-opt-situation-report-no-1-21-27-may-2021>.

the military operations carried out in 2008-2009, 2012, 2014 and 2021. The CESCR has expressed concern over “the very limited availability of health-care services and the deteriorating quality of such services in the Gaza Strip”,¹²⁸ which is a direct consequence of Israel’s 14-year-old blockade and closure of the Gaza Strip and the various restrictions imposed. In particular, Israel prohibits what it defines as “dual-use” items, namely items that could allegedly be used for military purposes, from entering Gaza.¹²⁹ The list of “dual-use” items includes essential medical equipment and supplies; in turn, this impedes “the delivery of humanitarian assistance, basic services and reconstruction programs, and undermine[s] the response capacity for emergencies.”¹³⁰

Accordingly, the CESCR has urged Israel to “[f]acilitate the entry of essential medical equipment and supplies and the movement of medical professionals from and to Gaza”, and to “[r]eview the medical exit-permit system with a view to making it easier for residents of Gaza to access, in a timely manner, all medically recommended health-care services.”¹³¹ More generally, the CESCR has called on 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.”¹³²

The Committee on the Elimination of All Forms of Racial Discrimination (CERD) has also urged 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; and also ensure access to the right to freedom of movement, housing, education, health care, water and sanitation, in compliance with the Convention [ICERD].”¹³³ In the context of the COVID-19 pandemic, UN Human Rights Council Resolution 46/3 has requested “that Israel, the occupying Power, cease immediately its imposition of prolonged closures and economic and movement restrictions, including those amounting to a blockade on the Gaza Strip.”¹³⁴

On 16 February 2021, the Palestinian Health Minister stated that the Israeli authorities had prevented a shipment of 2,000 doses of COVID-19 vaccines into the Gaza Strip. The doses were intended for frontline health workers and medical staff working in intensive care units for COVID-19 patients.¹³⁵ The shipment’s obstruction lasted two days, after which the Israeli authorities finally granted permission for the doses to enter the Gaza Strip.¹³⁶ Israeli officials have not provided a detailed reason for delaying the shipment, saying only that the request had been under review by the country’s National Security Council and the military agency that controls access to Gaza.¹³⁷

There have been reports that Israel is using the distribution of vaccines as a bargaining chip, withholding the approval of vaccine distribution unless the receiving party agrees to certain conditions. In February 2021, some members of the Knesset argued that Israel should withhold

¹²⁸ CESCR, *Concluding observations: Israel*, UN Doc. E/C.12/ISR/CO/4 (12 November 2019), para. 58.

¹²⁹ CESCR, *Concluding observations: Israel*, UN Doc. E/C.12/ISR/CO/4 (12 November 2019), para. 58.

¹³⁰ UN OCHA, *Gaza Strip: Import restrictions impede delivery of services and humanitarian assistance* (14 October 2015), at <https://www.ochaopt.org/content/gaza-strip-import-restrictions-impede-delivery-services-and-humanitarian-assistance>.

¹³¹ CESCR, *Concluding observations: Israel*, UN Doc. E/C.12/ISR/CO/4 (12 November 2019), para. 59(a–b).

¹³² *Ibid.* para. 11(a). See also Human Rights Committee, *Concluding Observations: Israel*, UN Doc. CCPR/C/ISR/CO/4 (21 November 2014), para. 12(a).

¹³³ CERD, *Concluding observations: Israel*, UN Doc. CERD/C/ISR/CO/17-19 (27 January 2020), para. 45.

¹³⁴ Human Rights Council, *Resolution 46/3: Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice*, UN Doc. A/HRC/RES/46/3 (23 March 2021) para. 12.

¹³⁵ Al Mezan, *Al Mezan condemns Israel’s blocking of COVID-19 vaccine to Gaza* (16 February 2021), at <http://www.mezan.org/en/post/23917/Press+Release%3A+Al+Mezan+condemns+Israel%E2%80%99s+blocking+of+COVID-19+vaccine+to+Gaza+>>.

¹³⁶ Steve Hendrix and Shira Rubin, *First coronavirus vaccines arrive in Gaza Strip following blockage by Israel*, The Washington Post (18 February 2021), at https://www.washingtonpost.com/world/middle-east/israel-gaza-vaccine-blocked/2021/02/17/5a29112a-70f7-11eb-8651-6d3091eac63f_story.html.

¹³⁷ *Ibid.*; Al-Jazeera, *Israel blocks shipment of Russian Sputnik V vaccine to Gaza* (16 February 2021), at <https://www.aljazeera.com/news/2021/2/16/palestinians-say-israel-blocking-shipment-of-vaccines-to-gaza>.

vaccine doses from entering Gaza until two Israeli captives and the bodies of two Israeli soldiers being kept by Hamas were returned.¹³⁸ WHO Director-General Tedros Adhanom Ghebreyesus warned as early as April 2020 about the danger of letting politicizing guide public health responses to COVID-19, asking states to “please quarantine politicizing COVID”.¹³⁹ The ICJ has, in other contexts, condemned efforts of States to engage in “vaccine diplomacy” by which they leverage vaccine access for political gain.¹⁴⁰ More generally, in its General Comment No. 14, the CESCR has affirmed that States, in complying with their obligations in terms of the right to health, must refrain from restricting the supply of adequate medicines and medical equipment to other States, and “[r]estrictions on such goods should never be used as an instrument of political and economic pressure.”¹⁴¹

Human rights NGOs have called on Israel’s authorities “to live up to their legal obligations and ensure that quality vaccines be provided to Palestinians living under Israeli occupation and control in ... the Gaza Strip.”¹⁴² On 25 March 2021, some of these NGOs filed a petition with the Israeli Supreme Court, which is currently still pending, “demanding that Israel take immediate steps to ensure regular supply of vaccines to the Palestinian population under its occupation and ongoing control in the West Bank and Gaza. The petitioners also demand that the state transfer its surplus vaccines to the Palestinians immediately.”¹⁴³

Under IHL, Israel has an obligation to allow “the free passage of all consignments of medical and hospital stores”,¹⁴⁴ as well as to “allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need.”¹⁴⁵ Such consignments may be subject to a right of control by Israel, yet this cannot result in arbitrary delays or denials of passage.¹⁴⁶ Israel has a similar obligation under IHRL to respect the rights to health and life of Palestinians residing in Gaza, in turn, implying a duty not to impede the transfer of medical supplies, including COVID-19 vaccines, from reaching Gaza.¹⁴⁷

As the Occupying Power, Israel has the additional obligations to ensure the “medical supplies of the population” and to “bring in the necessary ... medical stores and other articles”, including COVID-19 vaccines, given “the resources of the occupied territory are inadequate.”¹⁴⁸ Moreover, it must guarantee “the adoption and application of the prophylactic and preventive measures necessary to combat the spread of contagious diseases and epidemics”,¹⁴⁹ also by means of supplying COVID-19 vaccines to Gaza.

¹³⁸ Aaron Boxerman, *Knesset debates Palestinian request to allow COVID vaccines into Gaza*, The Times of Israel (15 February 2021), at <https://www.timesofisrael.com/knesset-debates-palestinian-request-to-allow-covid-vaccines-into-gaza/>.

¹³⁹ United Nations Press Statement, *No need to politicize COVID-19: UN health agency chief* (8 April 2020), at <https://news.un.org/en/story/2020/04/1061392>.

¹⁴⁰ ICJ, *The Unvaccinated Equality not Charity in Southern Africa* (May 2021), at <https://www.icj.org/wp-content/uploads/2021/05/Africa-The-Unvaccinated-Publications-Reports-2021-ENG.pdf>, p. 30.

¹⁴¹ General Comment No. 14, para. 41.

¹⁴² Al Mezan et al., *10 Israeli, Palestinian and international health and human rights organizations: Israel must provide necessary vaccines to Palestinian health care systems* (22 December 2020), at <http://www.mezan.org/en/post/23892>.

¹⁴³ Adalah, *Human rights groups petition Israeli Supreme Court, demand Israel provide vaccines to Palestinians in West Bank & Gaza* (25 March 2021), at <https://www.adalah.org/en/content/view/10279>.

¹⁴⁴ GC IV, art. 23. See also AP I, art. 70(2).

¹⁴⁵ ICRC Customary IHL Database, rule 55.

¹⁴⁶ *Ibid.*

¹⁴⁷ International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion (9 July 2004), para. 112; CESCR, *Concluding Observations: Israel*, UN Doc. E/C.12/ISR/CO/3 (16 December 2011), para. 8.

¹⁴⁸ GC IV, art. 55.

¹⁴⁹ GC IV, art. 56.

Equivalent obligations are imposed on Israel under article 12 of the ICESCR. By exercising effective control over Gaza,¹⁵⁰ Israel must comply with the obligation to fulfill the right to health, and correspondingly the right to life, of people residing there, particularly in light of the fact that the main reason behind the collapse of Gaza's health system is the blockade and closure enforced by Israel.¹⁵¹ Since the Hamas *de facto* authorities are unable to provide the necessary numbers of COVID-19 vaccine doses to the population of Gaza, and given Israel's continued exercise of effective control over the import of any goods into Gaza, including medical supplies, Israel must contribute to supply Gaza with an adequate number of COVID-19 vaccines.

Israel not only has failed to provide such vaccines shipments to Gaza, but it has also impeded or delayed consignments originating from third parties or secured by local authorities. In that respect, Israel has violated articles 23, 55 and 56 of GC IV, as well as article 12 of the ICESCR. To the extent that the lack of necessary COVID-19 vaccines has caused deaths among the Gaza population, or endangered their right to life, Israel's policies and practices have also breached article 6 of the ICCPR.

5. Recommendations

In light of the above, the ICJ recommends the Israeli authorities to:

- Abide by Israel's obligations under applicable IHRL and IHL with respect to the right to health of Palestinians residing in the OPT.
- Refrain from interfering in any manner with the Palestinian Authority's and the *de facto* Hamas authorities' attempts to secure COVID-19 vaccines from third parties, and from impeding or delaying vaccine consignments to the West Bank and Gaza.
- Provide adequate numbers of COVID-19 vaccine doses to vaccinate the whole population of the West Bank and the Gaza Strip, to the extent the Palestinian Authority and the *de facto* Hamas authorities are unable to fulfil such a duty.
- Refrain from providing preferential treatment to Israeli and Jewish settlers residing in the West Bank with respect to their access to vaccines and, correspondingly, from discriminating against Palestinians based on prohibited grounds under international law, including the ICESCR and the ICERD.
- Ensure that residents of East Jerusalem, including Kufr Aqab and Shu'fat, have access to adequate medical and healthcare, including COVID-19 vaccines, without discrimination.
- Fully lift the blockade and closure of Gaza in order to:
 - Allow the import without restrictions of all medical and other supplies, equipment and materials, including COVID-19 vaccines; and
 - Allow Gaza residents to seek medical treatment in Israel, other areas of the OPT or abroad, and avoid any discriminatory restriction on their freedom of movement.

The ICJ recommends the Palestinian Authority and the *de facto* Hamas authorities in Gaza to:

- Abide by Palestine's obligation to respect, protect and fulfil all human rights under applicable IHRL in accordance with the degree of authority they exercise within the OPT.

¹⁵⁰ CESCR, *Concluding observations: Israel*, UN Doc. E/C.12/ISR/CO/4 (12 November 2019), paras. 9, 11; Maastricht Principles, principle 18.

¹⁵¹ UN OCHA, *Statement by Lynn Hastings, the Humanitarian Coordinator for the occupied Palestinian territory, on the easing of restrictions into and out of Gaza* (8 July 2021), at <https://www.ochaopt.org/content/statement-lynn-hastings-humanitarian-coordinator-occupied-palestinian-territory-easing-restrictions-and-out>.

- With specific reference to the right to health, and in relation to the COVID-19 pandemic, implement the CESCR’s recommendations to:
 - Prioritize “minimum core obligations imposed by the [ICESCR]”; and
 - “[A]dopt appropriate regulatory measures to ensure that healthcare resources in both the public and the private sectors are mobilized and shared among the whole population to ensure a comprehensive, coordinated health-care response to the crisis.”¹⁵²
 - Refrain from using restrictions in access to and/or access to COVID-19 vaccines as or “an instrument of political and economic pressure”.¹⁵³
- Ensure, to the best of their abilities, that people residing in the areas of the OPT under their authority have access to COVID-19 vaccines without discrimination.

¹⁵² CESCR, *Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights*, UN Doc. E/C.12/2020/1 (17 April 2020), paras. 12–13.

¹⁵³ General Comment No. 14, para. 41.

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