

Under Occupation: Unprotected and Unvaccinated

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

Executive Summary
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/attached_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.

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