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## Human Rights Council

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Agenda items 2 and 7

### Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

### Human rights situation in Palestine and other occupied Arab territories

## Written statement\* submitted by United Nations Watch, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[1 February 2021]

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\* Issued as received, in the language(s) of submission only.



## Evoking Antisemitic Tropes by Accusing Israel of "Racist" COVID-19 Vaccinations

Human Rights Watch (HRW), Amnesty International and two United Nations (UN) experts<sup>1</sup> have slandered Israel by alleging that its world-leading COVID-19 vaccine drive is “racist” towards the Palestinians who live under de facto Hamas rule in Gaza and the Palestinian Authority (“PA”) in the West Bank.

Blaming the Jews for the plague or for poisoning the wells was a medieval rallying cry to massacre Jews. Those who falsely accuse the Jewish state of distributing vaccines based on race are evoking the same antisemitic tropes, only in modern form.

The accusations misrepresent both facts and the law. The truth is that everyone in the Israeli health system, including two million Israeli Arabs and hundreds of thousands of Palestinian Arabs who live in eastern Jerusalem, qualify for the vaccine. Those who are not part of the Israeli health system, whether they are Arabs living under PA rule or Jews in Israel who are tourists, do not qualify. Race has nothing to do with it.

The PA has sole responsibility for the health requirements of West Bank and Gaza Palestinians pursuant to the Oslo Accords, as described below. Consistent with its obligations under the Oslo Accords, the PA has been working to obtain the vaccine on its own and did not ask Israel for assistance.<sup>2</sup> In December 2020, a PA health Ministry official said: “We are working on our own to obtain the vaccine from a number of sources,” adding “We are not a department in the Israeli Defense Ministry. We have our own government and Ministry of Health, and they are making huge efforts to get the vaccine.”<sup>3</sup> In January 2021, PA Health Minister Mai al-Kaila reported that the PA had contacted four vaccine companies, including AstraZeneca and the Russian Sputnik V, for delivery of doses for 70% of the Palestinian population, with the World Health Organization (WHO) to provide doses for an additional 20%.<sup>4</sup> Subsequently, after false claims that Israel is legally obliged to provide vaccines to the Palestinians were published in leading news outlets like The Guardian, the PA joined in attacking Israel.<sup>5</sup>

Israel’s vaccine distribution plan does not discriminate. As noted, the vaccine is made available to all Israelis regardless of race or ethnicity, including Arab-Israelis and Palestinian residents of East Jerusalem. Contrary to various claims, the same applies to Israel’s vaccination of prisoners, which began in mid-January for all detainees, including Palestinians.<sup>6</sup>

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<sup>1</sup> Israel: Provide Vaccines to Occupied Palestinians, Human Rights Watch (January 17, 2021), <https://www.hrw.org/news/2021/01/17/israel-provide-vaccines-occupied-palestinians>; Denying COVID-19 vaccines to Palestinians exposes Israel’s institutionalized discrimination, Amnesty International (January 6, 2021), <https://www.amnesty.org/en/latest/news/2021/01/denying-covid19-vaccines-to-palestinians-exposes-israels-institutionalized-discrimination/>; Israel/OPT: UN experts call on Israel to ensure equal access to COVID-10 vaccines for Palestinians, Office of the UN High Commissioner for Human Rights (January 14, 2021), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26655>.

<sup>2</sup> Khaled Abu Toameh, Palestinians: We didn’t ask Israel for COVID-19 vaccine, Jerusalem Post (December 21, 2020), <https://www.jpost.com/israel-news/palestinians-we-didnt-ask-israel-for-covid-19-vaccine-652703>.

<sup>3</sup> Id.

<sup>4</sup> PA slow to secure Covid-19 vaccines, so it decides to blame Israel, Palestinian Media Watch (January 13, 2021), <https://palwatch.org/page/18502>.

<sup>5</sup> Khaled Abu Toameh, PA: Israel responsible for providing vaccine to Palestinians, Jerusalem Post (January 10, 2021), <https://www.jpost.com/arab-israeli-conflict/palestinians-accuse-israel-of-shirking-duty-to-supply-covid-19-vaccines-654946>.

<sup>6</sup> Israel to start vaccinating prisoners this week, including Palestinians, Times Of Israel (January 17, 2021), <https://www.timesofisrael.com/israel-to-start-vaccinating-prisoners-this-week-including-palestinians/>.

Critics cite Article 56 of the Fourth Geneva Convention concerning an occupying power's health-related obligations. Yet Israel's relationship with the Palestinians in the West Bank and Gaza is governed by the Oslo Accords. Additionally, Israel certainly cannot be considered an "occupying power" of the Hamas-controlled Gaza Strip since it completely withdrew from that territory in 2005.

Article 17 of Annex III to the September 1995 Oslo II Accord<sup>7</sup> transferred responsibility for health, including vaccinations, to the Palestinian side. Concerning epidemics and contagious diseases, Article 17(6) provides for the parties to "exchange information," "cooperate in combating them" and "develop methods for exchange of medical files and documents." This means that Israel must cooperate with the Palestinians and facilitate their efforts to acquire vaccines, which Israel is doing.<sup>8</sup> However, it does not obligate Israel to cover the costs of Palestinian health care.

Even if the Geneva Convention were applicable, Israel would not be obligated to finance and supply COVID-19 vaccines to the Palestinians, but to ensure that the local government has a functioning health system. Article 56 obligates the "occupying power" to "ensure and maintain," cooperation with "national and local authorities... 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."<sup>9</sup> Israel's cooperation with the Palestinians in combating the spread of COVID-19 has been hailed by the UN, including in recent remarks to the Security Council by new UN Special Coordinator for the Middle East Peace Process (UNSCO) Tor Wennesland.<sup>10</sup>

According to international law expert Eugene Kontorovich, the duty to cooperate under international law means the parties must "make a genuine effort to coordinate [and] provide information. It does not mean one side gives the other side free stuff."<sup>11</sup> Indeed, the Article 56 commentary makes clear that the duty of the "occupying power" ends when there is a local health authority capable of procuring its own medicines, as the PA has done.<sup>12</sup>

UN expert Michael Lynk also quotes to Article 60 of the Fourth Geneva Convention.<sup>13</sup> The language here simply states that provision of "relief consignments" does not relieve an "occupying power" of its obligations under Article 56. However, as noted Article 56 does not obligate an "occupying power" to supply vaccines in this situation.

<sup>7</sup> The Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, Annex III (last visited January 26, 2021),

<https://mfa.gov.il/MFA/ForeignPolicy/Peace/Guide/Pages/THE%20ISRAELI-PALESTINIAN%20INTERIM%20AGREEMENT%20-%20Annex%20III.aspx#app-17>.

<sup>8</sup> Lahav Harkov, Israel clears way for COVID vaccines to Palestinians in West Bank, Gaza, Jerusalem Post (January 21, 2021), <https://www.jpost.com/israel-news/israel-clears-way-for-covid-vaccines-to-palestinians-in-west-bank-gaza-656261>.

<sup>9</sup> Geneva Convention Relative to the protection of Civilian Persons in Time of War (Geneva IV), Article 56 (August 12, 1949), <https://ihl-databases.icrc.org/ihl/385ec082b509e76c41256739003e636d/6756482d86146898c125641e004aa3c5>.

<sup>10</sup> Security Council Briefing by Tor Wennesland, UNSCO (January 26, 2021), <https://unsc.unmissions.org/security-council-briefing-situation-middle-east-including-palestinian-question-delivered-un-3>; Raphael Ahren, UN praises 'excellent' Israeli-Palestinian cooperation in fight against pandemic, Times Of Israel (March 30, 2020), <https://www.timesofisrael.com/un-praises-excellent-israeli-palestinian-cooperation-in-fight-against-pandemic/>.

<sup>11</sup> Aaron Boxerman and Nathan Jeffay, Israeli immunity hinges on Palestinians getting COVID shots too, doctors say, Times Of Israel (January 21, 2021), <https://www.timesofisrael.com/israeli-immunity-hinges-on-palestinians-getting-covid-shots-too-doctors-say/>.

<sup>12</sup> Geneva IV, Commentary of 1958 to Article 56, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=7DCE280F4725F96EC12563CD0042C877>; see also @EVKontorovich, Twitter (January 17, 2021, 8:37 PM), <https://twitter.com/EVKontorovich/status/1350874790161223680>.

<sup>13</sup> Geneva IV, Article 60, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/9861b8c2f0e83ed3c1256403003fb8c5/7f04c3709c81a8c2c12563cd0051bea9>.

The accusation by HRW and others that Israel discriminates based on race, by vaccinating its citizens living in settlements in Area C of the West Bank while not vaccinating Area C Palestinians, is a lie.<sup>14</sup> The accusers cite to a 1991 Israeli Supreme Court decision concerning the Gulf War which mandated the Israeli government to supply gas masks to all residents of the West Bank—Jewish and Arab—without discrimination. However, that case predates the Oslo Accords and the transfer of civilian authority over West Bank Palestinians to the PA. Therefore, its holding regarding discrimination is no longer applicable. The PA is now responsible for the health care of Palestinians in the West Bank, including Area C. Thus, as noted above, the differential treatment is not based on race, but on the respective jurisdiction of Israel and the PA.

Furthermore, the Palestinians are in the same situation as most of the world. While Israel has led the world in its vaccine roll-out with more than 20% of the population vaccinated by mid-January, all other countries in the world, including Israel’s neighbors – Egypt, Jordan, Lebanon and the Syrian Arab Republic – are far behind.<sup>15</sup> Like the PA, these countries are acquiring vaccines from multiple sources, including China’s Sinopharm, the Russian Federation’s Sputnik V, Pfizer, AstraZeneca, Moderna and the WHO’s COVAX program.<sup>16</sup>

Although Israel is not legally obligated to provide vaccines to the Palestinians in the West Bank and Gaza, it is in its interest to ensure the vaccination of those populations as soon as possible. In the words of Moshe Bar Siman-Tov, former head of Israel’s health Ministry: “we are one epidemiological unit.”<sup>17</sup> In this vein, Deputy Health Minister Yoav Kisch recently indicated that Israel would consider assisting the Palestinians, after all Israelis who want to receive the vaccine are vaccinated.<sup>18</sup> Indeed, in early January, when the PA requested a limited number of vaccines from Israel, Israel provided doses for 100 people as a “humanitarian gesture.”<sup>19</sup> A few weeks later, Israel announced that it would transfer 5,000 doses for frontline health workers in the Palestinian Authority.<sup>20</sup>

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<sup>14</sup> @OmarSSHakir, Twitter (January 19, 2021, 3:32 PM),

<https://twitter.com/OmarSSHakir/status/1351522924147183618>.

<sup>15</sup> Joseph Hincks, Israel Is Leading the World in COVID-19 Vaccination. But Palestinians Aren’t on the List, *Time* (January 15, 2021), <https://time.com/5930060/israel-covid-vaccine-palestinians/>.

<sup>16</sup> Corona vaccines across the Middle East, *The National* (December 6, 2020), <https://www.thenationalnews.com/world/mena/corona-vaccines-across-the-middle-east-which-vaccine-is-egypt-saudi-arabia-and-qatar-buying-1.1123656>.

<sup>17</sup> Israeli immunity hinges on Palestinians getting COVID shots too, *supra* note 11.

<sup>18</sup> Deputy health minister says Israel may offer surplus vaccines to Palestinians, *Times Of Israel* (December 17, 2020), <https://www.timesofisrael.com/deputy-health-minister-says-israel-may-offer-surplus-vaccines-to-palestinians/>.

<sup>19</sup> Aaron Boxerman, Israel acknowledges it gave 100 COVID vaccine doses to Palestinian Authority, *Times Of Israel* (January 13, 2021), <https://www.timesofisrael.com/israel-acknowledges-it-gave-100-covid-vaccine-doses-to-the-palestinian-authority/>.

<sup>20</sup> Covid: Israel to transfer 5,000 vaccine doses to Palestinians, *BBC* (January 31, 2021), <https://www.bbc.com/news/world-middle-east-55879337>.