

## COVID-19 Vaccines for the Palestinian Population: Who is Responsible under International Law?

### Q&A

The objective of this Q&A is to clarify who is responsible, under international law, for the vaccination of the Palestinian population of the occupied Palestinian territory (oPt). To this end, it is useful to distinguish three main phases, each implicating different legal provisions and duty bearers: the **supply** of vaccines (that is, obtaining quality, safe and effective vaccines in sufficient quantity), the **entry** of such vaccines into the oPt, and their **distribution and administration** to Palestinians.<sup>1</sup>

Further analysis on the legal framework applicable in the oPt during the COVID-19 crisis is available on the Diakonia IHL Centre's website.<sup>2</sup>

#### 1. How does international law apply to the process of vaccinating the Palestinian population?

The Palestinian population of the oPt is protected by two bodies of international law in particular: international humanitarian law (IHL) which applies in situations of armed conflict including occupation, and international human rights law (IHRL) which applies at all times.

The oPt, which comprises the West Bank, including East Jerusalem, and Gaza, has been occupied by Israel since 1967. As a result, Israel is bound by IHL as an occupying power.<sup>3</sup> The scope of Israel's IHL obligations is a function of the control it exercises over the lives of Palestinians, including their health. IHRL protects all Palestinians and is binding on all authorities that have control over the oPt, Palestinians or their enjoyment of human rights: Israel, the Palestinian Authority (PA), the de facto authorities in Gaza as well as third States. The extent of their obligations under IHRL is commensurate to the control they exercise and to their available resources.

A number of provisions from IHRL and IHL are relevant to the question of COVID-19 vaccines for Palestinians. Under IHRL, all Palestinians have the right to enjoy "the highest attainable standard of physical and mental health". This right is enshrined in Art. 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and it implies a corresponding right to access COVID-19 vaccines. In order to realize the right to health, States must take the

---

<sup>1</sup> These definitions are provided for the purpose of this Q&A only and do not purport to reflect a scientific nor comprehensive description of the entire process leading to the immunization of a population. For instance, this Q&A does not address vaccine development. Different stakeholders may employ other terms or attribute different meanings to the terms used in this Q&A. For instance, the term "distribution" is sometimes used to refer to the import of vaccines into a territory, a stage of the process which is here defined as the "entry" phase. The term "distribution" is used here instead to designate the distribution of vaccines *within* the oPt. The term "administration" (of vaccines) refers here to inoculation itself.

<sup>2</sup> See Diakonia IHL Centre, The Occupied Palestinian Territory and the COVID-19 Pandemic, <https://www.diakonia.se/en/IHL/where-we-work/jerusalem/opt-and-covid-19/>.

<sup>3</sup> On the law applicable in the oPt generally, interested readers can refer to previous publications of the Diakonia IHL Centre, <https://www.diakonia.se/en/IHL/resources/>.

necessary steps both individually and through international assistance and cooperation, to the maximum of their available resources, to control epidemics including through immunization.<sup>4</sup>

The health of civilians living in occupied territories is also protected in a number of IHL provisions. These include notably [Art. 43](#) of the Hague Regulations of 1907 and Arts. 55, 56, 59 of the Fourth Geneva Convention of 1949 (GCIV) quoted below.

## **2. Who is responsible for supplying vaccines for the Palestinian population?**

Israel is ultimately responsible for the supply of vaccines for Palestinians. As the occupying power, Israel has the duty to ensure civil life in the oPt, which includes public health.<sup>5</sup> More specifically, [Art. 55 GCIV](#) makes clear that the occupying power has “the duty of ensuring the [...] medical supplies” of the local population. Medical supplies include vaccines (as well as injection supplies, protective personal equipment, etc.), and this obligation concerns the whole population of the occupied territory. Israel is obliged to make COVID-19 vaccines available to Palestinians also pursuant to Art. 12 of the ICESCR.

If the occupying power fails to comply with its obligation to supply vaccines itself, it must allow and facilitate the passage of vaccines supplied by third States or humanitarian organizations, according to [Art. 59 GCIV](#).<sup>6</sup> In fact, third States have a responsibility in this regard. All States party to the ICESCR have committed to take steps including through international assistance and co-operation to achieve progressively – though as expeditiously and effectively as possible<sup>7</sup> – the full realization of the right to health, to the maximum of their available resources.<sup>8</sup> In particular, the international community has a “collective responsibility” to address epidemics, and economically developed States have a “special responsibility” to assist other States in this regard.<sup>9</sup>

## **3. Do the Oslo Accords relieve Israel from its obligation, under international law, to supply COVID-19 vaccines for Palestinians?**

Some commentators have argued that, pursuant to the Oslo Accords, it is the PA, rather than Israel, that is responsible for the health of Palestinians and therefore to secure the procurement of COVID-19 vaccines.<sup>10</sup>

---

<sup>4</sup> Art. 2(1) and Art. 12(2)(c) ICESCR; UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment n°14: The Right to the Highest Attainable Standard of Health*, E/C.12/2000/4, 11 August 2000, para. 16.

<sup>5</sup> Art. 43 Hague Regulations 1907. The Supreme Court of Israel clarified that the notion of civil life (or “public life”) is broad enough to include various aspects of life, including the economy, education, welfare, hygiene or health, see Israel’s High Court of Justice, *Jam’iat Iscan Al-Ma’almoun v. IDF Commander in the Judea and Samaria Area*, Judgment, HCI 393/82, 28 December 1983, para. 18.

<sup>6</sup> As Art. 60 GCIV makes clear, although the occupying power must allow and facilitate the passage of supplies sent by third States or humanitarian organizations, this does not relieve it from its primary duty to provide such supplies itself.

<sup>7</sup> UN CESCR, *General Comment n°14*, above note 4, para. 31.

<sup>8</sup> Art. 2(1) ICESCR.

<sup>9</sup> UN CESCR, *General Comment n°14*, above note 4, para. 40. In 2005, WHO member States adopted a revised version of the International Health Regulations aimed at preventing, protecting against and controlling epidemics. On this occasion, they reiterated the importance for States to actively collaborate with each others and with WHO in case of epidemics. See WHO, *International Health Regulations*, 2<sup>nd</sup> ed., 2005, p. 3, para. 5.

<sup>10</sup> According to Art. 17(1) of the Protocol Concerning Civil Affairs of the Oslo Accords, “[p]owers and responsibilities in the sphere of Health in the West Bank and the Gaza Strip will be transferred to the Palestinian

The Oslo Accords have no bearing whatsoever on Israel's obligations *under IHL*. As GCIV makes clear, Palestinians cannot be deprived of the protection of the Convention by any agreement concluded between the occupying power and the authorities of the occupied territory.<sup>11</sup> Thus, the Oslo Accords do not nullify nor displace Israel's IHL obligations as an occupying power; they merely clarify how Israel is to discharge these obligations. In Oslo, it was agreed that some governmental functions, including as they relate to health, would be assumed by the Palestinian side. Nonetheless, Israel remains the duty bearer under IHL.

In keeping with the spirit of both IHL and the Oslo Accords, the PA should be given the opportunity to secure the procurement of vaccines for its population first (by its own means or through international assistance, for instance via COVAX).<sup>12</sup> However, the health of Palestinians must remain the primary consideration. The right to health implies that quality health goods, such as vaccines, must be available in the oPt in sufficient quantity<sup>13</sup> and, pursuant to IHL, bilateral arrangements (including those concerning the allocation of governmental functions in the occupied territory) must not "adversely affect" the population in any way.<sup>14</sup> Therefore, if the PA is unable or unwilling to secure COVID-19 vaccines for its population, or if it does so in a manner incompatible with IHRL standards – notably as they relate to the quality and quantity of vaccines – Israel remains ultimately responsible for supplying the vaccines. If Israel can supply vaccines earlier than the PA could, or if it can supply better vaccines (in terms of quality, safety or efficacy per WHO standards),<sup>15</sup> it must do so. If the number of vaccines secured by the PA is insufficient, Israel must supply the remaining doses.

#### **4. Can Israel prioritize its own population over the population it occupies?**

Israeli officials have suggested that Israel may supply vaccines for Palestinians at a later stage, if it has surplus. This policy is incompatible with Israel's obligations under international law. Pursuant to IHRL, access to COVID-19 vaccines must be non-discriminatory. The ICESCR proscribes differential treatment in the access to health goods and services on a number of grounds, notably race, colour, religion, political opinion, national origin or birth.<sup>16</sup> Israel is bound by this obligation of non-discrimination towards both Israelis and Palestinians. Palestinians indeed fall within the protective scope of this obligation even if they are not Israeli nationals and do not live in Israel: they live in a territory occupied by Israel, and therefore fall under Israel's jurisdiction for the purpose of its obligations under IHRL.

This does not mean that Israel cannot prioritize certain groups for access to COVID-19 vaccines, if supplies are limited. However, such differential treatment is permissible only if based on a reasonable and objective justification: notably, the aim and effect of the differential

---

side". In fact, under the Protocol, the Palestinian side is in charge of continuing the routine vaccination of the population with already existing vaccines (Art. 17(2)), but not of securing the procurement of new vaccines developed in the context of an epidemic like the COVID-19 epidemic (in which case Art. 17(6) applies).

<sup>11</sup> See Arts. 7, 8, 47 GCIV.

<sup>12</sup> GCIV acknowledges the role of the local authorities of the occupied territory, notably in choosing and implementing public health measures (see for instance the wording of Art. 56 GCIV).

<sup>13</sup> UN CESCR, *General Comment n°14*, above note 4, paras. 12(a) and (d).

<sup>14</sup> Pursuant to Art. 7 GCIV.

<sup>15</sup> Before it can be used, it is recommended that a vaccine should be approved through the WHO Emergency Use Listing Procedure, see WHO, Emergency use listing, <https://www.who.int/teams/regulation-prequalification/eul>.

<sup>16</sup> UN CESCR, *General Comment n°14*, above note 4, paras. 12, 18, 19.

treatment must be legitimate and compatible with the nature of the Covenant rights.<sup>17</sup> In relation to COVID-19 vaccination, WHO guidance should inform the meaning of what is a “legitimate” aim of prioritization.<sup>18</sup> According to the WHO, it is legitimate to prioritize health workers for instance, or age groups at higher risk of infection or transmission.<sup>19</sup> By contrast, prioritizing on the ground of nationality or residency for instance, would not serve a legitimate purpose in the sense of IHRL. Thus for Israel to prioritize young healthy Israelis who are not health care workers (nor belong to any of the groups that should legitimately be prioritized) over at-risk Palestinians living in the oPt would constitute unlawful discrimination incompatible with the ICESCR. It must also be noted that a lack of available resources cannot be an objective and reasonable justification for differential treatment.<sup>20</sup>

## **5. Who is responsible for ensuring the safe and rapid entry of vaccines into the oPt?**

COVID-19 vaccines have to first get from their site of production to the oPt, before they can reach sites of vaccination within the oPt. The international transportation of vaccines involves multiple public and private actors and requires global cooperation – a legal obligation for all States party to the ICESCR.<sup>21</sup> While packaging and shipping requirements differ depending on the vaccine, compliance with international regulatory requirements and guidelines<sup>22</sup> is essential to ensure the efficient delivery of vaccines to all corners of the world, including to the oPt.

Through its control over the international borders of the Palestinian territory, Israel controls the entry of vaccines into this territory. If Israel itself procures the vaccines – as it must under IHL – it is also responsible for ensuring their delivery. If vaccines are provided to the PA by others (for instance, through COVAX), Israel has the duty to allow and facilitate their rapid and unimpeded passage into the oPt. Pursuant to Arts. 59 and 61 GCIV indeed, Israel must refrain from hindering the passage of vaccines – for instance, by imposing measures of control that would result in breaking the cold chain essential to preserve the quality, safety and efficacy of vaccines – and is obliged to take positive steps to facilitate such passage. These positive steps include notably reducing administrative procedures and other formalities at customs as far as possible.<sup>23</sup>

## **6. Who is responsible for distributing vaccines within the oPt and administering them to Palestinians?**

Once COVID-19 vaccines enter the oPt, they must be distributed within it. The fragmentation of the oPt constitutes an important practical challenge to equitable distribution. Cooperation

---

<sup>17</sup> UN CESCR, *General Comment n°20: Non-Discrimination in Economic, Social and Cultural Rights*, E/C.12/GC/20, 2 July 2009, para. 13.

<sup>18</sup> As part of their obligations under the ICESCR, States should avail themselves of the technical guidance of the WHO when implementing public health measures, UN CESCR, *General Comment n°14*, above note 4, para. 63. This is particularly important in times of pandemics.

<sup>19</sup> See WHO SAGE Values Framework for the Allocation and Prioritization of COVID-19 Vaccination, September 2020, <https://www.who.int/publications/i/item/who-sage-values-framework-for-the-allocation-and-prioritization-of-covid-19-vaccination>.

<sup>20</sup> UN CESCR, *General Comment n°20*, above note 17, para. 13.

<sup>21</sup> See Question 1 above.

<sup>22</sup> See for instance WHO, *Guidelines on the international packaging and shipping of vaccines*, DIP 818, 2019; IATA, *Guidance for Vaccine and Pharmaceutical Logistics & Distribution*, November 2020.

<sup>23</sup> Dapo Akande, Emanuela-Chiara Gillard, *Oxford Guidance on the Law Relating to Humanitarian Relief Operations in Situations of Armed Conflict*, October 2016, para. 64.

between all relevant authorities – Israel, the PA and the de facto authorities in Gaza – will be necessary to ensure that Palestinians have access to vaccination irrespective of where they live in the oPt – in Area A, B or C of the West Bank, East Jerusalem or Gaza.

According to [Art. 56 GCIV](#), the Occupying Power must, to the fullest extent of the means available to it, ensure public health in the occupied territory, including through the “adoption and application of the prophylactic and preventive measures necessary to combat the spread of [...] epidemics”. This would include COVID-19 vaccination. However, the occupying power must do so “with the cooperation of national and local authorities”. The meaning of “cooperation” depends on the factual circumstances. In the case of the oPt, as noted earlier, the Oslo Accords are relevant to understand the modalities of the cooperation between Israel and the PA. Both parties agreed for Israel to discharge some of its responsibilities as an occupying power – including as they relate to public health – through Palestinian authorities.

The vaccination of Palestinians in the oPt will be governed by the National Deployment and Vaccination Plan developed by the PA. The PA and the de facto local authorities in Gaza are responsible for ensuring that all aspects of the plan – including distribution, storage, administration of the vaccines and monitoring – are implemented in accordance with IHRL standards.<sup>24</sup> The PA must notably ensure the equitable distribution of vaccines between the West Bank and Gaza, and their physical and economic accessibility to all Palestinians on a non-discriminatory basis.<sup>25</sup> The de facto authorities in Gaza must comply with the same standards. As noted above, prioritizing certain groups for vaccination may be compatible with IHRL if decided on the basis of objective and reasonable criteria, such as those identified by the WHO.<sup>26</sup> The PA and the de facto authorities in Gaza are also responsible for collecting and sharing data in accordance with IHRL standards, with a view to monitor notably vaccine safety and efficacy as well as equity in immunization coverage. They must also develop tailored awareness campaigns to address misconceptions about COVID-19 vaccines, in the West Bank and Gaza respectively.<sup>27</sup>

Pursuant to its obligations under Art. 56 GCIV, Israel must support Palestinian authorities in their deployment and vaccination campaign, by all appropriate means. This support must always be compatible with the right to self-determination of the Palestinian people, including when it comes to public health choices.<sup>28</sup> Israel must notably allow and facilitate the passage of vaccines from the West Bank to Gaza, as well as between different areas of the West Bank. Israel must *a fortiori* refrain from hindering access to safe and effective vaccination for Palestinians. For instance, Israel must cease unlawful policies and practices preventing access to health care facilities for remote communities in Area C of the West Bank. It must not

---

<sup>24</sup> On these standards see generally UN CESCR, *General Comment n°14*, above note 4. See also WHO, *Guidance on developing a national deployment and vaccination plan for COVID-19 vaccines*, WHO/2019-nCoV/NDVP/2020.1, November 2020, [https://www.who.int/publications/i/item/WHO-2019-nCoV-Vaccine\\_deployment-2020.1](https://www.who.int/publications/i/item/WHO-2019-nCoV-Vaccine_deployment-2020.1).

<sup>25</sup> The accessibility aspect of the right to health comprises elements of non-discrimination, physical and economic accessibility and information accessibility, see UN CESCR, *General Comment n°14*, above note 4, para. 12.

<sup>26</sup> As noted under Question 4, as part of their obligations under the ICESCR, States should avail themselves of the technical guidance of the WHO when implementing public health measures, see UN CESCR, *General Comment n°14*, above note 7, para. 63.

<sup>27</sup> UN CESCR, *General Comment n°14*, above note 4, para. 12(b).

<sup>28</sup> By ratifying the ICESCR, Israel recognized that “[a]ll peoples have the right of self-determination” and that by virtue of this right “they freely determine their political status and freely pursue their economic, social and cultural development”. Israel also agreed to promote the right of self-determination. See Art. 1(1) and (3) ICESCR, and see also Art. 1(1) of the International Covenant on Civil and Political Rights.

interfere with the supply of electricity to Gaza, essential for maintaining cold storage and preserving the quality, safety and efficacy of vaccines.

Third States must also provide assistance to the Palestinian authorities in ensuring safe and effective vaccination for Palestinians, to the maximum of their available resources.<sup>29</sup> They may, for instance, engage in diplomatic efforts to foster cooperation between Israel and the PA, provide financial or technical support concerning the transport or storage of vaccines, or their administration to the population. In addition, third States must not render aid or assistance to Israel in the commission of violations of international law<sup>30</sup> – for instance unlawful demolitions or unlawful access and movement restrictions. They must use their influence over Israel, if any, to prevent further IHRL violations and to ensure respect for IHL.<sup>31</sup>

---

<sup>29</sup> By virtue of Art. 2(1) and Art. 12(2)(c) ICESCR as explained under Question 1.

<sup>30</sup> International Law Commission, “Responsibility of States for Internationally Wrongful Acts”, *Yearbook of the International Law Commission - Report of the Commission to the General Assembly on the work of its fifty-third session*, Vol. II, 2001, Art. 16.

<sup>31</sup> UN CESCR, *General Comment No. 14*, above note 4, para. 39; common Art. 1 to the four 1949 Geneva Conventions.

## **Annex: Relevant provisions in international law**

### **International Covenant on Economic, Social and Cultural Rights (1966)**

#### *Article 2*

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means [...].
2. The States Parties to the present Covenant undertake 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.

#### *Article 12*

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:  
[...]

c) The prevention, treatment and control of epidemic, endemic [...] diseases [...].

### **Hague Regulations (1907)**

#### *Article 43*

The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

### **Fourth Geneva Convention (1949)**

#### *Article 55*

To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate [...].

#### *Article 56*

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 [...] 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 [...] epidemics [...].

#### *Article 59*

If the whole or part of the population of an occupied territory is inadequately supplied, the Occupying Power shall agree to relief schemes on behalf of the said population, and shall facilitate them by all the means at its disposal.

Such schemes, which may be undertaken either by States or by impartial humanitarian organizations such as the International Committee of the Red Cross, shall consist, in particular, of the provision of consignments of foodstuffs, medical supplies and clothing [...].