

August 29, 2022

To

The Committee on Economic, Social and Cultural Rights

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c/c Office of the High Commissioner for Human Rights

United Nations Office at Geneva - CH-1211 Geneva 10, Switzerland

E-mail: urgent-action@ohchr.org

**Ref.: Information received from Israel on follow-up to the
concluding observations on its fourth periodic report***

Dear Sirs,

Physicians for Human Rights Israel (PHRI)¹ is a non-profit and non-governmental organization that strives to promote a more fair and inclusive society in which the right to health is applied equally for all. We want to bring to your attention **ongoing violations of international human rights law and more specifically, regarding the right to health**, to be considered and assessed by this Committee on its 72nd session, beginning on 26 September 26th, 2022, based on information submitted by Israel on follow-up to the Concluding Observations on its 4th periodic report.

1) Medical care: the closure policy and the related permit regime regarding the Gaza Strip and the occupation and settlement policy in the West Bank, including East Jerusalem

1. According to this CESCR Concluding Observations, **there are concerns regarding the enjoyment of the right to health** and other rights due to Israel's policies relating to the Occupied Palestinian Territory and their severe impact on people living there, ***"namely the closure policy and the related permit regime regarding the Gaza Strip and the occupation and settlement policy in the West Bank, including East Jerusalem (...)." 2 3 4 5***

¹ More information about PHRI work can be found at <https://www.phr.org.il/en/>.

² E/C.12/ISR/CO/4. Concluding observations on the fourth periodic report of Israel. Paragraph 10, p. 2. Available at: [G1932294.pdf \(un.org\)](#). Last access: 09.08.2022.

³ This Committee also reminded that "(...) the State party that it has positive and negative obligations with regard to the Occupied Palestinian Territory, depending on its level of control and the transfer of authority, that it should not raise any obstacle to the exercise of such rights in those fields where competence has been transferred to the Palestinian authorities and that any measures taken by the State party should ensure that the legislative and policy measures relating to the occupied territories taken by the State party as the occupying Power do not result in any permanent alteration in the political or legal status of the territories or have irreparable consequences for the people living there". E/C.12/ISR/CO/4. Op. cit., paragraph 11, pp. 2-3. Available at: [G1932294.pdf \(un.org\)](#). Last access: 09.08.2022.

⁴ The Committee urged 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" and also to "take immediate steps to facilitate the free movement of Palestinians within the Occupied Palestinian Territory, including East Jerusalem and the Gaza Strip, and ensure that any measures restricting the free movement of civilians and goods from, into and within the Gaza Strip are in line with its obligations under the Covenant." E/C.12/ISR/CO/4. Op. cit., paragraph 11, pp. 2-3. Available at: [G1932294.pdf \(un.org\)](#). Last access: 09.08.2022.

⁵ In January 2019, in a letter referring to "Comments by the State of Israel to the Concluding Observations of the Committee on

2. Security issues were brought to the attention of this Committee by the Government of Israel (GOI) to justify the existing policies. Moreover, according to the GOI:

“(...) the policy regarding entry of Palestinians into Israel, including in order to transfer from the West Bank to Gaza and to leave the State, is publicly available on the Civil Administration’s website, and is examined regularly by the relevant authorities, based on the developing security situation. The relevant authorities approve hundreds of thousands of requests to enter Israel each year, for a variety of purposes, including employment and commerce. Each week hundreds of thousands of Palestinians enter Israel from the West Bank and Gaza, and recently the number of permits from Gaza for commerce purposes was increased significantly. Regarding residents of the West Bank, each day approximately 100,000 Palestinian workers enter Israel, alongside tens of thousands of residents who enter for medical, commercial or other purposes. Note that there is no limitation on the freedom of movement within the West Bank, and checkpoints are not operational on a day-to-day basis (checkpoints are only temporarily established following a security incident or pursuant to security-related intelligence). The exit of Palestinian residents to foreign countries is conducted through the Allenby bridge and in many cases through the Ben Gurion Airport.”⁶

3. However, this is not the reality. Checkpoints are not operating only on a day-to-day basis. **The closure policy and the related permit regime regarding the Gaza Strip and the occupation policy in the West Bank, including East Jerusalem, are hindering the guarantee of the right to health to many Palestinians living in Gaza, West Bank and East Jerusalem, including children and patients in need of more complex health treatments.** According to the World Health Organization (WHO) *“all aspects of life, encompassing underlying determinants of health, have been profoundly affected by the chronic occupation and situations of long-term displacement and blockade for Palestinians in the West Bank, including east Jerusalem, and the Gaza Strip”*.⁷
4. The referred policies and other measures⁸ adopted by the GOI have devastating impacts on the Palestinian healthcare system and on Palestinian Authority’s ability to develop its health system - whose health services are inferior and less available than those available in Israel.
5. The GOI has argued that under the Interim Agreement, many responsibilities concerning the health system was transferred to the PA both in Gaza and in the West Bank (item 10, “b”).⁹ However, Israel’s authority and control over most necessary conditions for protecting and promoting the right to health, alongside with its repeated violations of the right to health — led to a situation where the PA cannot protect the right to health of Palestinians.

Economic, Social and Cultural Rights (E/C.12/ISR/CO/R.4)” and addressed to the Chair of this Honorable Committee, Mr. Renato Zerbini Ribeiro Leão, Ambassador Aviva Raz Shechter said that despite Israel’s principled opposition to the applicability of the Convention in the West Bank and Gaza, *“extensive information was presented regarding the allocation of powers and responsibilities between Israel and the Palestinian Authority with regard to the rights mentioned by the Convention”*, including concerning the right to health (item 10, p. 3). In this communication the GOI mainly referred to security issues such as the ongoing armed conflict carried out by Hamas and other organizations, the Interim Agreement to the Palestinian side – both in Gaza and in the West Bank, concluding that the Committee’s legal conclusions were “unfounded and biased. (item pages 3-4).

⁶ [Information received from Israel on follow-up to the concluding observations on its 6th periodic report : \(un.org\)](#)

⁷ WHO. https://apps.who.int/gb/ebwha/pdf_files/WHA74/A74_22-en.pdf, paragraph 34

⁸ These policies include the exploitation of natural resources and the expropriation of land, fiscal leakage of trade tax revenues, reduced income tax revenues due to high levels of unemployment and the economic impacts on restrictions on movement and access of people, goods and services.

⁹ [Information received from Israel on follow-up to the concluding observations on its 6th periodic report : \(un.org\)](#), p. 3. Last access: 21.08.2022.

6. The Palestinian health system remains poor in financial resources, personnel, and support in various spheres of medicine. Significant portions of its healthcare budget is spent on purchasing external health services. In 2019, medical referrals outside the oPt, including Egypt, Jordan and Israel accounted for 11% of the total referrals. The Israeli blockade and the policy of restricting development have led to a fragmented health care system where the Palestinian Authority have to duplicate health services to enable patients to access treatment without the need to rely on the Israeli permit system.
7. **Disparities on health services available to Palestinians in the oPt and to Israelis are reflected in health indices, including life expectancy, infant and maternal mortality rates.** Palestinians in the West Bank live on average nearly 7 years less than Israelis.¹⁰ Infant mortality rates under the age of 5 in the oPt stand at 12.8 per 1,000 live births, four times as high as Israel's 3.1.¹¹ Regarding maternal mortality rates, standing at 47 per 100,000 in the oPt, compared to 2 per 100,000 in Israel.¹² Inequalities appear in budget allocation, funding for public medicine and number of hospital beds *per capita*. Palestinian health services are inferior and less available than the ones available to Israelis.
8. The gaps between health resources of the Palestinian and the Israeli health systems, only increased during the COVID-19 crisis. In early 2020, ventilators were in short supply in the West Bank and Gaza, with 10 ventilators per 100,000 people in the West Bank, as compared with 50 per 100,000 in Israel. By the end of August 2021, 1,430 COVID-19 tests per million people per day being carried out in Gaza and the West Bank, compared to nearly 16,000 in Israel - more than 11 times as many.^{13 14}
9. **When healthcare needs of Palestinian patients extend beyond that which local institutions can provide — partly resulting of the de-development outlined above — Palestinians must apply for and receive a timely permit to enter or cross Israel on the way to Palestinian health facilities in the West Bank and East Jerusalem.**
10. **Permits are routinely denied outright or left unanswered by Israeli authorities** (more specifically the Coordinator of Government Activities in the Territories (COGAT) and Israeli Security Agency (ISA) - blocking patients from accessing appropriate medical care. **According to the WHO in June 2022, over 38% of patients from Gaza did not receive a medical exit permit to access their treatments in hospitals in East Jerusalem and elsewhere.**¹⁵
11. **Particularly vulnerable groups are impacted by Israel's medical exit permit policies.** More than ¼ of patients applying for medical exit permits in Gaza were oncology patients. From January to December

¹⁰ Health conditions in the occupied Palestinian territory, including east Jerusalem, and in the occupied Syrian Golan, Report to the 74th World Health Assembly, 20 May 2021. Available at https://apps.who.int/gb/ebwha/pdf_files/WHA74/A74_22-en.pdf. Last access: 21.08.2022.

¹¹ Physicians for Human Rights Israel. Responsibility Shirked: Israel and the Right to Health in the Occupied West Bank during COVID-19., August 2021, p. 22. Available at https://www.phr.org.il/wp-content/uploads/2021/08/4601_ResponsibilityReport_Eng_digital-FINAL-VER.pdf. Last access: 21.08.2022.

¹² Ibid., p.19.

¹³ Oxford data, 31 August.

¹⁴ Israel vaccinated more than half of its citizens by March 2021, including Israeli settlers living in the oPt, while - at the time - only 82,000 doses of the Russian Sputnik V vaccine were delivered to Palestinians in the oPt, primarily donated by Russia and the United Arab Emirates. Israel has sent only 2,000 vaccines from its own reserves to the PA, intended for Palestinian health care workers but covering only a fraction of their actual needs..

¹⁵ WHO. Health Access Barriers for patients in the occupied Palestinian territory. Monthly Report. July 2022. Available at: https://www.un.org/unispal/wp-content/uploads/2022/07/WHOMARPTJUNE22_80722.pdf. Last access: 20.08.2022.

2021, 51 cancer patients appealed to PHRI after denied access to medical care. Preventing patients from accessing appropriate medical care constitutes a severe violation of the right to health.¹⁶

12. Patients in need of leaving Gaza for medical treatment are entitled to an accompanier. Since 2018 a specific accompanier permit is available for parents.¹⁷ For children, the presence of their parents can impact their medical recovery and their absence during medical procedures contributed to lasting psychological impacts.¹⁸
13. **From January 2018 to January 2022, PHRI assisted more than 180 children (2 months to 18 years), including breastfeeding babies, whose parents were denied permits and would not have been able to accompany their children when going through medical procedures outside Gaza. 26% of the children whose families contacted PHRI suffered from cancer, severe heart diseases (18%) and required neurological care (10%). For more information, check our recent position paper on forced separation¹⁹.**
14. **Recognizing the impact of occupation on the health of the Palestinian population measures must be urgently adopted to enable both the emergence of the necessary conditions for health and the ability of Palestinians to fully exercise their right to health, unhindered by Israel, including:**
 - a) Provision and funding of treatments that are not available, or unavailable at sufficient standards, in the oPt.
 - c) Allowance for free and open passage between the West Bank, including East Jerusalem, and the Gaza Strip, enabling the Palestinian healthcare system to function as a single unit
 - d) Abolishment of current medical permit mechanism, allowing all Palestinian in need of medical treatment and their accompaniers to access the best medical treatment available without delays, especially for women, children and those in need of long-term treatment (like cancer and dialysis' patients).
 - e) Ensure all children exiting Gaza for medical treatment to be accompanied by at least one of their parents, whose requests for permit must be confirmed prior to the child's hospital appointment not to cause any delay of treatment.
 - f) Eliminate the blockade on the Gaza Strip to allow the freedom of movement for people as well as the free passage of medicine and medical equipment.²⁰

¹⁶ It may also constitute inhumane, degrading treatment in violation of Article 7 of the ICCPR and Article 1 of the CAT.

¹⁷ Available

at: <http://www.cogat.mod.gov.il/he/services/Procedure/%D7%A1%D7%98%D7%98%D7%95%D7%A1%20%D7%94%D7%A8%D7%A9%D7%90%D7%95%D7%AA.pdf>. Last access: 20.08.2022.

¹⁸ The medical impact of separating children from their parents has been documented. During conversations with PHRI, staff at East Jerusalem hospitals noted that toddlers and young children separated from their parents refused to eat and interact with their environment, repeatedly asking for their parents. Indeed, childhood trauma created by separation from parents has been widely noted in medical literature. Separation threatens the attachment bond, which is critical to a child's inherent sense of protection and security and drives the brain development foundational for subsequent physical, emotional, social and cognitive maturation. When parents are removed from a child's life suddenly and without adequate support, childhood trauma can ensue through dramatically increased stress hormones, which risks becoming toxic, activating inflammatory and immune changes, considered to be a response to the increased risk of physical injury and healing required in situations of danger. Such processes drive the long term development of disease and disorder, while short-term impact includes chest pains, vomiting and significantly increased anxiety.

¹⁹ Physicians for Human Rights Israel. Forced Separation. Israel's devastating policy against Palestinian children and their parents accessing medical care. June/2022, p. 4. Available at: https://www.phr.org.il/wp-content/uploads/2022/07/4995_forcedSeparation_paper_Heb.pdf. Last access: 29.08.2022.

²⁰ Similar recommendations by Bolivia, Cuba, Egypt, Jordan, Malaysia, Pakistan, Palestine, Qatar, Switzerland, Venezuela from UPR.

II) Clinical trials on human beings

15. On its Concluding Observations, the Committee expressed concern about “(...) **the absence of framework legislation regulating clinical trials and that clinical trials have been carried out on human beings in the absence of appropriate regulatory processes** (art. 12)”²¹

16. The GOI’s response highlighted that “(...) *Israel not only has clear regulations on this topic, but also an auditing and review Committee to ensure upholding the standards of the framework, and violators are prosecuted to the full extent of the law, both institutionally and criminally*” (item 40).²²

17. **The fact: in Israel there is a legal loophole on human trials conducted outside hospitals or other medical institutions.** Clinical trials are not regulated in primary legislation, and secondary legislation is subjected to changes that can occur without transparency or enough public contribution and discussion. The secondary legislation is outdated and is not legally binding on non-medical institutions, e.g. soldiers and prisoners, - contrary to the HRC’s General Comment 20.²³ The Public Health Ordinance 1940 and 1980 Public Health Regulations **was in place but still enabled the conduct of unethical trials (1998-2006) of a vaccine for anthrax on hundreds of soldiers, that threaten their life and health.**²⁴ **The legislation in force do not provide for monitoring and control mechanisms and adequate protection.**²⁵

18. Although legislation proposals have been discussed in the Knesset since 2007, the Ministry of Health has not yet given its input, blocking any transformation of proposals into government-initiated legislation.²⁶

19. Aiming at attracting more pharma-initiated research into Israel, the MoH has led a more lenient policy for clinical trials and in 2021. It has also updated its informed consent form without adequate transparency. For example, placebo patients participating in clinical trials are deprived from accessing the trial product. The wording of the form is not clear, thus violating free and informed consent.

19. Access to the trial product is one of the biggest motivators for patients hoping to access innovative and life-saving treatment to participate in clinical trials. The lack of transparency concerning patients who received placebo and their impossibility to access the trial product violates free and informed consent. If they knew in advance that they were not eligible, they may have refused to participate.

20. Following pressure from PHRI, the MoH initiated an internal hearing, without public participation, clarifying its position, but not changing the distinction between those receiving placebo and the trial product. **The referred updated informed consent form still does not explicitly warn participants that should they receive the placebo, they may not have access to the trial product at the end of the clinic trial.**²⁷

²¹ E/C.12/ISR/CO/4. Concluding observations on the fourth periodic report of Israel. Paragraph 10, p. 10. Available at: [G1932294.pdf \(un.org\)](https://www.unhcr.org/refugees/pdf/E1932294.pdf). Last access: 21.08.2022.

²² [Information received from Israel on follow-up to the concluding observations on its 6th periodic report : \(un.org\)](https://www.unhcr.org/refugees/pdf/E1932294.pdf), p. 12.

²³ Under customary international law everyone has the right to health and integrity of their body, placing a severe prohibition of medical experiments, except in cases of informed consent.

²⁴ Sfar, Michael, 2016. Anthrax Experiment - Omer 2 - Failures in Legal Regulation. <https://goo.gl/uNA9iR>

²⁵ In its Response to the List of Issues, Israel cited the 1999 Amendment to the Nation’s Health Regulations, yet this applied only to genetic experiments. General regulations regarding clinical trials have not been amended since 1980.

²⁶ This issue was raised in various Committees since 2007 and legislation was proposed in June 2016.

²⁷ Response of the Pharmaceutical Division to PHRI, 21 December 2021. Letter on file with PHRI.

21. This Committee on Economic, Social and Cultural Rights, in its 2019 review of Israel, as already urged Israel to “adopt framework legislation to regulate clinical trials on human beings and protect the right to health of persons participating in such trials and put in place effective oversight mechanisms. It also recommends that the State party ensure that thorough investigations are carried out in cases of unregulated medical trials, and appropriate remedies are provided to participants.”²⁸ **No such steps have been taken.**

Shall you have any question or need additional information, please do not hesitate to contact us.

Yours sincerely,

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²⁸ UN. Committee on Economic, Social and Cultural Rights, observations on the fifth periodic report of Israel, 12 November 2019, 61, E/C.12/ISR/4. Available [here](#) [accessed November 2019]