

Survey of Israeli Practice Relating to the COVID-19 Pandemic, in light of international law

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Domestic legal framework

- **General:** The Government of Israel (GoI) has not declared the existence of a state of emergency with respect to the applicability and implementation of international legal instruments to which it is party specifically following the outbreak of the COVID-19 pandemic, nor derogated from its obligations under the ICCPR. However, it relied on various emergency powers under domestic

law to regulate a variety of aspects of the legal response to the COVID-19 crisis in a manner that involves limitations on the enjoyment of various human rights.

- **Emergency powers:** On 27 January 2020 the minister of health declared the Novel Coronavirus 2019-nCoV (COVID-19) to be a ‘dangerous contagious disease that creates a severe danger to public health’.¹ Under the Public Health Ordinance of 1940,² this declaration empowers the minister of health and officials in the ministry of health to take special measures for addressing a danger emanating from a declared contagious disease that threatens any part of Israel. These measures included ordering self-isolation, restrictions on gatherings, restrictions on movement and forced hospitalisation, wearing of masks in public, and sanctions for failure to comply with the various instructions.
- **State of Emergency:** On 15 March 2020 the GoI began relying on its power to promulgate emergency regulations during a State of Emergency (that have the force of primary legislation).³ A declaration of a State of Emergency has been in effect in Israel since its establishment in 1948. The state of emergency allows the government to adopt regulations that supersede parliamentary legislation. The legislation that empowers the Knesset to declare a state of emergency does not define what constitutes an ‘emergency’.⁴
- **State of Emergency legislation:** On 23 June 2020 emergency regulations were adopted by parliamentary legislation.⁵ On 23 July 2020 they were substituted by comprehensive parliamentary legislation, when the Knesset adopted the Special Powers for Treating the Novel Coronavirus (Temporary Provision) Law, 2020, in effect until 30 June 2021 (hereafter ‘Temporary Provision Law’).⁶ According to the Law, the Government may declare an State of Emergency due to Coronavirus (SEdC) if it is convinced that there is a real risk of a broad spread of the COVID-19 and a significant harm to public health, which require action under the law. The Knesset may annul a declaration of SEdC. During a SEdC the government may promulgate regulations to prevent contagion or reduce the spread of the virus, reduce morbidity or protect vulnerable

¹ Order on a Dangerous Contagious Disease Under the Public Health Order (27 January 2020) https://www.nevo.co.il/law_word/law10/yalkut-8659.pdf.

² https://www.nevo.co.il/law_html/law01/049_001.htm.

³ Emergency Regulations (Novel Coronavirus – Enforcement), 2020, https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.nevo.co.il%2Flaw_word%2Flaw19%2F502_253.doc&wdOrigin=BROWSELINK.

⁴ Basic Law: The Government, ss 38, 39. The declaration is extended periodically. It was last extended by Knesset approval on 3 June 2020, until 11 September 2021, https://www.nevo.co.il/Law_word/law10/yalkut-9606.pdf.

⁵ https://www.nevo.co.il/law_word/law14/law-2810.pdf.

⁶ https://www.nevo.co.il/Law_word/law14/law-2832.pdf.

population. Such regulations are in force for up to 28 days and may be extended periodically. They too require parliamentary approval. The regulations may include restrictions on distancing from private homes, subject to various exceptions; social distancing; closure of businesses; closure of educational institutions; and restrictions on public and private transport. They may be adopted only for the time and to the extent required for these purposes, following considerations of alternative, their effect on rights and on the economy. Upon the adoption of the Temporary Provision Law a declaration on a SEdC came into force for 45 days,⁷ which has since been extended periodically, under parliamentary approval.⁸

- **Special State of Emergency:** On 30 September 2020 the Knesset amended the Temporary Provision Law to introduce a ‘Special State of Emergency due to COVID-19’ (SSE),⁹ which the government may declare if, during the period of a SEdC it is convinced that there is a broad spread of COVID-19 which causes a severe harm to public health, and there are already full restrictions. Such a declaration may be in force for up to 7 days, and may be extended for up to 21 days altogether; or longer, with parliamentary approval. During a period of an SSE the government may adopt further restrictions over those applicable in a SEdC.

GA resolutions on the COVID-19 pandemic

- A/RES/74/270: Global solidarity to fight the coronavirus disease 2019 (COVID-19) (3 April 2020): Israel co-sponsored the draft resolution,¹⁰ which was subsequently adopted through the silence procedure.
- A/RES/74/274: International cooperation to ensure global access to medicines, vaccines and medical equipment to face COVID-19 (20 April 2020): Israel co-sponsored the draft resolution,¹¹ which was subsequently adopted through the silence procedure

⁷ Special Powers for Combatting the New Coronavirus (Temporary Provision), 2020 s 51.

⁸ https://www.nevo.co.il/law_word/law10/yalkut-9082.pdf (6 September 2020 extension from 7 September to 6 November 2020), https://www.nevo.co.il/law_word/law10/yalkut-9340.pdf, <https://m.knesset.gov.il/activity/committees/huka/news/pages/press301220.aspx> (23 December 2020 extension from 3 January to 3 March 2020), https://www.nevo.co.il/law_word/law10/yalkut-9459.pdf (3 March extension until 1 May), https://www.nevo.co.il/law_word/law10/yalkut-9584.pdf (3 May 2021 extension until 29 June 2021).

⁹ Special Powers for Combatting the New Coronavirus Regulations (Temporary Provision), 2020 (Amendment No 2) (30 September 2020) https://www.nevo.co.il/law_word/law14/law-2860.pdf.

¹⁰ UN Doc A/74/L.52/Add.1 (2 April 2020) <https://undocs.org/en/A/74/L.52/Add.1>.

¹¹ UN Doc A/74/L.56/Add.1 (20 April 2020) <https://undocs.org/A/74/L.56/Add.1>.

- A/RES/74/306: Comprehensive and coordinated response to the coronavirus disease (COVID-19) pandemic (11 September 2020):¹² Israel voted in favour of paragraph 7 of draft resolution A/74/L.92 (relating to reproductive rights) and abstained on its paragraph 34 (on considering COVID-19 experience in enhancement of global transport).¹³ Israel voted against the amendment in draft resolution A/74/L.93¹⁴ It then voted against the adoption of the draft resolution as a whole. It explained its vote as follows:¹⁵

We believe that the text put forward by the co-facilitators was a comprehensive and balanced one. We were disappointed by the amendment put forward on paragraph 20 of the draft omnibus resolution, which threatened the delicate balance in the text achieved by the co-facilitators, and we therefore voted against the resolution. Israel remains committed to working together with the international community in the fight against the coronavirus disease.

- A/RES/74/307: United response against global health threats: combating COVID-19 (11 September 2020): Israel co-sponsored draft resolution A/74/L.57 and voted in favour of it, resulting in Resolution 74/307.¹⁶
- A/RES/75/4: Special session of the General Assembly in response to the coronavirus disease (COVID-19) pandemic (5 November 2020): Israel abstained in the vote on a proposed amendment relating to speakers at the opening of the special session.¹⁷ Israel proposed an amendment to the operative provisions on participation in the special session so that instead of referring to ‘Member and Observer States, the European Union’, and ‘each Member State, Observer State, and the European Union’, they would refer to ‘Member State and observers of the General Assembly’.¹⁸ It further voted against a proposed oral amendment by the US to delete reference to the role of the WHO in the response to COVID-19.¹⁹ Following the rejection of its

¹² UN Doc A/74/L.92, adopted 169-2-2 (Israel voting against), UN Doc A/74/PV.64.

¹³ UN Doc A/74/PV.64 p 6.

¹⁴ UN Doc A/74/L.93 (adopted 84-13-60), *ibid.* The proposal replaces the wording in para 20, from ‘Calls for the urgent removal of unjustified obstacles, in order to ensure the universal, timely and equitable access to, and fair distribution of, all quality, safe, efficacious and affordable essential health technologies and products, including their components and precursors, that are required in the response to the COVID-19 pandemic;’ to ‘Strongly urges States to refrain from promulgating and applying any unilateral economic, financial or trade measures not in accordance with international law and the Charter of the United Nations that impede the full achievement of economic and social development, particularly in developing countries;’. The amendment was perceived as directed against US sanctions against Iran, <https://healthpolicy-watch.news/united-nations-general-assembly-adopts-resolution-calling-for-holistic-covid-19-response-united-states-israel-vote-against-the-bloc/>.

¹⁵ Adopted 122-0-31 UN Doc A/74/PV.64 p 9.

¹⁶ UN Doc A/74/PV.64 p 30-31.

¹⁷ Proposed amendment UN Doc A/75/L.12 (4 November 2020), voting recorded in UN Doc A/75/PV.21 p 10.

¹⁸ Israel’s proposed amendment UN Doc A/75/L.13 (4 November 2020), <https://undocs.org/A/75/L.13> introduced in UN Doc A/75/PV.21 p 7, voting recorded *ibid* p 10.

¹⁹ voting recorded *ibid* p 11.

proposed amendment, Israel abstained in the vote on the draft resolution as a whole,²⁰ stating that it²¹

regrets having had to abstain on the modalities resolution today (resolution 75/4). We would have preferred to vote in favour but could not do so due to the political pressure that prevented the resolution from using the agreed participation formula. We therefore dissociate from operative paragraphs 3(c) and 4(a).

- A/RES/75/17: International cooperation to address challenges faced by seafarers as a result of the COVID-19 pandemic to support global supply chains (1 December 2020): Israel joined in the adoption of the resolution without a vote.²²
- A/RES/75/156: Strengthening national and international rapid response to the impact of the coronavirus disease (COVID-19) on women and girls (16 December 2020).²³
- A/RES/75/157: Women and girls and the response to the coronavirus disease (COVID-19) (16 December 2020).²⁴ Israel co-sponsored the resolution at the 3rd committee.²⁵

World Health Organisation

- **Notification under the International Health Regulations:** On 27 January 2020 the Minister of Health added the ‘Novel Coronavirus 2019-nCoV infection’ to the list of diseases of international importance that require immediate notification under the WHO’s International Health Regulations (2005).²⁶

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WHO standards and guidelines:

- At the WHO Executive Board session Israel stated: ‘The WHO’s publishing of hundreds of COVID-19 related guidance materials have been invaluable to Israel and our partners in managing

²⁰ Draft resolution UN Doc A/75/L.8 adopted 150-0-03.

²¹ UN Doc A/75/PV.21 p 14.

²² UN Doc A/75/PV.32 p 5.

²³ UN Doc A/75/471 para 15 <https://undocs.org/en/A/75/471>. Israel objected to proposed amendments. The draft resolution UN Doc (A/C.3/75/L.6/Rev.1) as a whole was adopted without a vote in the third committee; in the UNGA adopted without a vote (16 December 2020), UN Doc A/75/PV.46.

²⁴ UN Doc A/75/PV.46 adopted without a vote.

²⁵ UN Doc A/75/471 para 18, <https://undocs.org/en/A/75/471>. It objected to some of the proposed amendments. Draft Resolution UN Doc A/C.3/75/L.13/Rev.1 was adopted without a vote in the third committee; in the UNGA adopted without a vote (16 December 2020), A/75/PV.46.

²⁶ https://www.nevo.co.il/Law_word/law06/tak-8334.pdf]

our pandemic response, and the transparent, evidenced-based information has been especially important'.²⁷

- **CAPSCA:** Israel is a member of CAPSCA (a voluntary cross-sectorial, multi-organizational collaboration programme managed by ICAO in partnership with the WHO, to combine efforts to improve preparedness planning and response to public health events that affect the aviation sector).

Aviation

Entry and exit through airports

- On 13 August 2020 the GoI adopted regulations regarding requirements on operating airports and flights for the prevention of COVID-19 contagion.²⁸
- On 25 January 2021 the GoI amended the regulations to prohibit the entry of foreign passenger aircrafts other than in exceptional situations.²⁹
- On 6 February the GoI amended the regulations prohibiting entry or exit of public (scheduled) flights (of persons holding exit or entry permits) other than by Israeli flight operators.³⁰ This provision was rescinded two weeks later.³¹
- As of 16 March 2021, flight slots for public flights are to be allocated to the extent possible inter alia equally among flight operators servicing the various destinations decided on.³²

Compensation for flight cancellations (relating to Montreal Convention 1999, art 22(1)):

²⁷ WHO, 'Statement by Israel, COVID-19 Response and WHO's Work in Health Emergencies (Item 14.1 and 14.2), WHO Executive Board 148th Session' 18-26 November 2020 https://mfa.gov.il/MFA/InternatlOrgs/Documents/EB148-Item14-COVID19%20Response_Israel.pdf.

²⁸ Special Authorities for Combatting the New Coronavirus Regulations (Temporary Provision) (Restrictions on Operating Airports and Flights), 2020.

²⁹ Special Authorities for Combatting the New Coronavirus Regulations (Temporary Provision) (Restrictions on Operating Airports and Flights) (Amendment No 8), 2020 https://www.nevo.co.il/law_word/law06/tak-9116.pdf.

³⁰ Special Authorities for Combatting the New Coronavirus Regulations (Temporary Provision) (Restrictions on Operating Airports and Flights) (Amendment No 10), 2020 https://www.nevo.co.il/law_word/law06/tak-9154.pdf.

³¹ Special Authorities for Combatting the New Coronavirus Regulations (Temporary Provision) (Restrictions on Operating Airports and Flights) (Amendment No 12), 2021, https://www.nevo.co.il/law_word/law06/tak-9192.pdf.

³² Reg 1A(d)(3) as amended by Special Authorities for Combatting the New Coronavirus Regulations (Temporary Provision) (Restrictions on Operating Airports and Flights) (Amendment No 14), 2021.

- On 13 July 2020 the Knesset adopted legislation³³ that reduces the liability of airlines for flight cancellation or for deviation of more than 8 hours from schedule (ahead or behind). This liability includes for assistance services, refund or an alternative flight, and compensation for the inconvenience. The law reduces the liability so as to ensure the financial viability of airlines.³⁴

Health standards in aviation:

- **Reliance on European standards:** On 13 August 2020 the GoI adopted regulations on restrictions on entry into airport terminals and movement within them, check-in, restrictions on boarding, maintenance of cleanliness and sterilization, physical conditions on board, inflight service and data collection. The regulations require operators of international airports and operators of airline carriers to adopt work procedures and methods in compliance with the regulations that would comply, inter alia, be ‘as far as possible, with due regard to’ the EASA Guidance on Management of Crew Members in Relation to the SARS–CoV–2 Pandemic, the COVID–19 Aviation Health Safety Protocol, and the EASA Interim guidance on Aircraft Cleaning and Disinfection in relation to the SARS–CoV–2 Pandemic. The regulations also adopt the EASA Interim Guidance on Aircraft Cleaning and Disinfection in Relation to the SARS–CoV–2 Pandemic as the standard for cleaning and sterilising airline carriers.³⁵

Alleviations to national regulations relating to international aircraft standards and recommended practices:

In accordance with Article 38 of the Chicago Convention and temporary exemptions and exceptions as described in the Safety Oversight Manual (Doc 9734), Israel informed ICAO of the following

³³ Flight Services Regulations (Compensation and Assistance following Cancellation of a Flight or Change of its Terms) (New Coronavirus - Temporary Provision) (13 July 2021), amended and published the following day in Flight Services (Compensation and Assistance following Cancellation of a Flight or Change of its Terms) (New Coronavirus - Temporary Provision - Amendment) (14 July 2021), https://www.nevo.co.il/Law_word/law14/law-2826.pdf. For an updated version of the law see https://www.nevo.co.il/law_html/law01/500_707.htm.

³⁴ Flight Services Regulations (Compensation and Assistance following Cancellation of a Flight or Change of its Terms) (New Coronavirus - Temporary Provision - Amendment) (14 July 2021), Explanatory Note, https://www.nevo.co.il/Law_word/law14/law-2826.pdf.

³⁵ Special Powers for Combatting the Novel Coronavirus Regulations (Temporary Provision) (Restrictions on Operating Airports and Flights), 2020, regs 2(2)(b), 11(2)(b), 17(c), 15(c), https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.nevo.co.il%2Flaw_word%2Flaw01%2F502_342.doc&wdOrigin=BROWSELINK.

COVID-19 related alleviations with regard to core and extended standards, necessary to maintain aviation operations during the COVID-19 pandemic:³⁶

- Standard 1.2.4.4.1: In accordance with emergency regulations (new Corona Virus) (extension of validity period and postponement of dates), 2020, the validity period of airmen medical certificates issued by the CAAI whose validity period end on the dates between 10 March 2020 and 10 May 2020 is automatically extended by two months from the final date expiry of the individual medical certificate. Israel shall recognize differences filed by other states as long as they are within the guidelines presented in the Israeli details of difference and mitigations.
- Standard 9.4.1.1: Exemption FSD-153-2020 granted to Israel-certified airline El Al allows crew members to be assigned to operate at the flight controls despite not having met the recent experience requirements of the standard, provided the following conditions are met: 1) the flight crew member operating the controls has conducted, either 3 take-offs and 3 landings within the preceding 120 days, or one take off and one landing within the preceding 30 days, in an aircraft of the same type or in a flight simulator approved for the purpose. A flight crew member who has been active in the preceding 120 days, but who does not meet the above conditions, may regain their qualification by conducting a take off and landing under the supervision of a company check airman. 2) The flight crew member is not considered "inexperienced" under the company's procedures. 3) The other flight crew member assigned to the take-off and landing meets the requirements of the standard. 4) The Pilot-in-command has accumulated 5,000 hours of flight experience in large airplanes, at least 100 of which on an aircraft of the same type being operated. Rationale and conditions/mitigations: Minimization of regular flight schedule and lack of domestic access to approved simulators requires alleviation to the recent experience requirements, provided the following conditions are met: 1) The exemption is granted until 30/11/2020, unless otherwise suspended. 2) A risk assessment and mitigation activities are conducted for the operations under the Air operator's SMS. Israel shall recognize differences filed by other states as long as they are within the guidelines presented in the Israeli details of difference and mitigations.
- Standard: 9.4.4.1: Exemptions granted to Israeli Air carriers (certified under chapter 13 of IANR.OPS) allow extension of the validity of a proficiency check for a period of four months after its individual expiry for each individual flight crew, provided the following is met: 1) The

³⁶ ICAO, COVID-19 Contingency Related Differences (CCRD) / Electronic Filing of Differences (EFOD) (2 March 2021) <https://www.icao.int/safety/COVID-19OPS/Documents/state.pdf>.

flight crew member has received refresher training, followed by the completion of an assessment by means established by the operator to determine that the required level of knowledge to operate the applicable class or type is maintained. That assessment shall include class – or type – specific abnormal and emergency procedures, and shall be approved by the CAAI rationale and conditions/mitigations: Lack of domestic access to approved simulators requires temporary extension of proficiency check validity provided the mitigation measures provided in the exemption are taken, and subject to the operation meeting the following conditions: 1) The exemption is granted until 30/11/2020, unless otherwise suspended. 2) A risk assessment and mitigation activities are conducted for the operations under the Air operator's SMS. Israel shall recognize differences filed by other states as long as they are within the guidelines presented in the Israeli details of difference and mitigations.

Trade

Measures affecting trade in intellectual property rights (relating to TRIPS)

- **Use without authorisation of right holder:** On 18 March 2020, Israel's minister of health issued a permit to the Emergency Department at the Ministry of Health and to K.S. Kim International Ltd., to exploit a patent-protected invention by importing generic versions of lapinovir/ritonavir manufactured by Hetero in India, for the purpose of treating COVID-19 patients. The Permit states that '[t]he said exploitation is necessary for the maintenance of essential supply or services.'³⁷
- Israel's Patent Authority fast-tracked LPV/r's approval, along with seven other medicines for the treatment of COVID-19.³⁸

Measures affecting trade in goods (relating to GATT Articles XI:2(a) XX(b))

- **Temporary export licensing requirements on medical equipment:** on 6 May 2020 Israel informed the WTO of temporary export licensing on requirements on medical equipment (eg

³⁷ <http://freepdfhosting.com/645a6a5b51.pdf>. For a comparative practice review see <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/TPR/OV23.pdf&Open=True>. For non-governmental commentary on the implications of the measures see <https://www.pearlcohen.com/the-worldwide-stakes-of-israeli-compulsory-licenses-for-anti-coronavirus-drugs/>.

³⁸ Patents Authority, Notice regarding Fast Tracking examination of Patent Approval Requests relating to treatment of Coronavirus' http://www.justice.gov.il/Units/RashamHaptentim/news/Pages/Covid19_app.aspx.

alcohol, face masks, medical oxygen, swabs, personal cleaning products containing ethyl/isopropyl alcohol, disinfection products, artificial respiration devices) (HS 2207; 2208; 2804.40; 3005; 3402.20; 3808.90; 6210; 6307.90; 8413; 8414; 8481.80; 9018; 9019.20; 9020), due to the COVID-19 pandemic, effective until 30 May 2020.³⁹

- **Temporary export licensing requirements on medical equipment:** on 16 June 2020 Israel informed the WTO of temporary export licensing requirements on medical equipment (eg alcohol, swabs, personal cleaning products containing ethyl/isopropyl alcohol, disinfection products, face masks, artificial respiration devices, and respirators) (HS 2207; 2208; 3005; 3402.20; 3808.90; 6307.90; 9019.20; 9020), due to the COVID-19 pandemic, effective until 15 October 2020.⁴⁰
- **New temporary export licensing scheme:** on 30 October 2020 Israel informed the WTO of a new temporary export licensing scheme, eliminating export licensing requirements for respiratory machines, and new export licensing requirement for a number of COVID-19 tests products (HS 2207; 2208; 3002.15.90; 3005; 3402.20; 3808.90; 3822.00.90; 3923.30.90; 3923.90.00; 4015.19.00; 6307.90), effective until 30 November 2020.⁴¹

Measures taken in the Agricultural sector

- Israel adopted emergency regulations in order to reduce the infection and the virus spread. According to the notification '[a]gricultural production and related industry and services are considered essential and are therefore excluded from these regulations. Services in farms and ports of entry, such as plant protection inspectors and veterinarians, have continued'. In addition, following daily assessment of the availability of fresh agricultural produce, voluntary duty-free TRQs have been temporarily increased to import onions, cucumbers and eggs. The plant protection and inspection services (PPIS) and veterinary and animal health services (IVSAH) have also facilitated imports by accepting official and scanned copies of original phytosanitary or health

³⁹ WTO Doc G/MA/QR/N/ISR/1 (6 May 2020), WTO, Overview of Developments in the International Trading Environment Annual Report by the Director-General (Mid-October 2019 to Mid-October 2020) (30 November 2020) page 250 <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/TPR/OV23.pdf&Open=True>.

⁴⁰ WTO Doc G/MA/QR/N/ISR/1/Add.1 (16 June 2020), WTO, Overview of Developments in the International Trading Environment Annual Report by the Director-General (Mid-October 2019 to Mid-October 2020) (30 November 2020) page 250 <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/TPR/OV23.pdf&Open=True>.

⁴¹ WTO Doc G/MA/QR/N/ISR/1/Add.2 (30 October 2020), <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/MAQRN/ISR1A2.pdf&Open=True>.

certificates, as well as e-certifications that can be verified, for specific products and under certain conditions.⁴²

Support measures

Israel informed the WTO of COVID-19 temporary support measures as follows:⁴³

- MSME-specific support measure: On 6 April the central bank announced that it will provide the banking system with fixed-rate loans at 0.1% interest rate, for a term of 3 years, with the goal of increasing the supply of bank credit to small businesses. The plan will be in operation until the end of May, and its scope will be NIS 5 billion.
- MSME-specific support measure: Loan guarantees for SMEs: On 4 May the GoI has expanded the loan fund for SMEs from NIS 8 billion to NIS 14 billion. The GoI guarantees 85% of each loan but guarantees are limited to 15% of overall losses on all loans. Loans have a maturity of up to 5 years, with lower collateral requirements (5%). The first year is interest rate free. The time required for banks to provide credit approval is reduced to 7 working days. Amount: NIS 14 billion.
- Businesses are able to apply for accelerated depreciation (Double-Declining Depreciation) on equipment purchased for the business from September 1, 2020 to June 30, 2021 (effective 9 November 2020).
- Arrangements for the distribution of VAT payments of businesses whose turnover in March-December 2020 decreased by more than 25% compared to their turnover in March-December 2019 (effective 2 March 2021).
- MSME-specific support measure: Tax and payment deferrals (NIS 9 billion). Payment of VAT, municipal taxes, social security contributions, utility payments, government fees have been deferred for SMEs until the end of April (effective 14 April 2020).

⁴² WTO Committee on Agriculture, Ad Hoc Report on Covid-19 Measures Taken by Israel in the Agricultural Sector
WTO Doc G/AG/GEN/160 (22 June 2020)
<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/AG/GEN160.pdf&Open=True> and identical
report circulated as WTO Doc G/SPS/GEN/1810 by the Committee on Sanitary and Phytosanitary Measures (8 July
2020), <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/G/SPS/GEN1810.pdf>; WTO Doc
G/AG/GEN/160/Add.1 (17 March 2021),
<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/G/AG/GEN160A1.pdf>.

⁴³ Permanent Delegation of Israel to the WTO (26 March 2021),
https://www.wto.org/english/tratop_e/covid19_e/covid_details_by_country_e.htm?country=ISR.

- MSME-specific support measure: Grant for small and medium businesses (up to NIS 400 million turnover) (NIS 12.7 billion as of 3 March 2021), once every two months, from May 2020 to June 2021, of up to NIS 500 000 to cover fixed expenses, Amount: NIS 12.7 billion.
- MSME-specific support measure: Grant to self-employed (NIS 15.0 billion as of 3 March 2021): A grant of 70% of twice the average monthly taxable income up to NIS 15 000, once every two months, from May 2020 to June 2021, for self-employed that experience a 40% decrease in activity. Amount: NIS 15.0 billion.
- [MSME-specific support measure] State Guarantee Fund for Small Businesses - NIS 8 billion for public loan guarantees to SMEs.

Participation in WTO statements

- 5 May 2020: Israel participated in a Statement on Covid-19 and the Multilateral Trading System.⁴⁴
- 14 May 2020: Israel participated in a Statement on Highlight in the Importance of MSMEs in the Time of COVID-19.⁴⁵

State immunity

In Class Action 2069-04-20 *Freedom Watch v People's Republic of China*, the Attorney General submitted an intervening brief (8 November 2020), according to which:⁴⁶

29. On the factual level, the action details a series of acts that the petitioners attribute to the PRC and persons acting on its behalf that have allegedly taken place in the territory of the PRC. According to the legal submission, the petitioners detail that the COVID-19 virus was spread in Israel, but other than a general statement, there is neither claim nor example of a specific event of spreading in Israel by the respondent, and all the claims detailed in the action refer only to acts allegedly carried out in the territory of the PRC. Accordingly, and since the tort exception as defined in the Foreign State Immunity Law does not apply, the respondents are immune to the action...

⁴⁴ <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/GC/212.pdf>.

⁴⁵ WTO Doc WT/GC/215 (14 May 2020), <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/GC/215.pdf>.

⁴⁶ Class Action 2069-04-20 *Freedom Watch v People's Republic of China* (8 November 2020) paras 29-31, <https://www.gov.il/BlobFolder/dynamiccollectorresultitem/90-11/he/2069-04-20.pdf>. An identical view was expressed in the Attorney-General's intervention in Class Action 53469-03-20 *Herzliya Association for its Residents v People's Republic of China* (8 November 2020) paras 33-34 <https://www.gov.il/BlobFolder/dynamiccollectorresultitem/53469-03-20/he/53469-03-20.pdf>.

30. ... The tort exception to foreign state immunity from civil action, under Israeli law, and international law and in comparative law, contains a clear requirement that the acts attributed to the foreign government be carried out in the territory of the forum state.

31. Since the action in question does not point to acts carried out by the PRC or anyone on its behalf in the territory of Israel, the PRC, the government authorities in China and officials representing China acting in their capacity enjoy immunity from the action in Israeli courts.

Entry into and exit from Israel

Foreigners

Entry and sojourn

- **Prohibition on entry of foreigners:** Since 12 March 2020 non-resident foreign nationals have denied entry to Israel, pursuant to the Minister of Interior decision. Permission to enter was to be considered for foreign nationals who could prove that they have a place and are able to go into a 14-day isolation.⁴⁷ On 18 March 2020, the ban was expanded so that foreign nationals were barred even if they have proven the ability to stay in quarantine.⁴⁸
- **Extension of visas:** Starting 16 March 2020, the Population and Immigration Authority announced that visas of various types expiring from 12 March 2020 would be automatically extended until 30 June 2020.⁴⁹ Additional extensions was later granted until 31 August 2020,⁵⁰ and 30 March 2021.⁵¹ Other than in exceptional circumstances,⁵² tourist visas (B2) have not been automatically extended.⁵³ Tourist visas falling within specific categories were extended automatically until 30 June 2020.

⁴⁷ https://www.gov.il/en/departments/news/coronavirus_update_12032020.

⁴⁸ https://www.gov.il/en/departments/news/no_entry_to_foreigners_18032020.

⁴⁹ https://www.gov.il/en/departments/news/visa_extension_16032020 (A5 (temporary residents), B1 general (work visa and general), A1 (provisional status for eligible students), A2 (students / students) and yeshiva students, A3 clerics, A4 (ancillary to A2 and A3)); <https://www.gov.il/en/departments/news/visa-extensions-corona> (section 2(a)(5)); https://www.gov.il/en/departments/news/extending_visa_for_volunteers_19032020 (B4 visas); https://www.gov.il/en/departments/news/visa_extension_b1_31032020 (B1 visas).

⁵⁰ https://www.gov.il/en/departments/news/reminder_extending_visas_31082020 (A5 (temporary resident), B1 (partners), B1 (humanitarian)).

⁵¹ https://www.gov.il/en/departments/news/autu_visa_extending_0121 (A1 (eligible under the right of return), A2 (students/trainees/interns), A3 (clerics), A4 (ancillary to A2 and A3), A5 (temporary resident), B1 (work visa), B4 (volunteers)).

⁵² https://www.gov.il/en/departments/news/b2_tourist_visa_important_notice.

⁵³ https://www.gov.il/en/departments/news/visas_questions_coronavirus (2 April 2020).

- **Restrictions on entry:** On 5 February 2021 the GoI adopted regulations on entry into and exit from Israel.⁵⁴ The regulations prohibit entry by non-resident foreign nationals other than by exceptional permit granted on an enumerated list of 4 grounds.⁵⁵ The list exceptions has been modified, for example to allow entry of foreign workers necessary for the purpose of maintaining the functional continuity of the economy.

Exit

- **Restrictions on exit for persons required to self isolate:** Under regulations of 14 August 2020, persons required to self isolate are not permitted to exit Israel.⁵⁶ To ensure this, information was to be transferred from the health systems to the border control systems regarding persons required to self isolate.⁵⁷ Foreign nationals leaving Israel before the end of their mandated isolation period without special permission would be in violation of the laws of the State of Israel and would not be approved entry to Israel on their return. A list of states from which entry is entirely prohibited has been modified from time to time.⁵⁸

Diplomats

- **Exclusion from exit restrictions:** On 1 October 2020 the regulations limiting exit of non-resident foreign nationals were amended to exclude holders of foreign diplomatic or service passports, diplomatic or service visas, UN travel documents or persons registered in the Ministry of Foreign Affairs as diplomatic or consular staff or officers of international organisations.⁵⁹
- **Family members of international employees (international organisations)** who hold a Type 2 residence permit (B2) are required to apply for an extension.⁶⁰

⁵⁴ Special Powers for Combatting the New Coronavirus (Temporary Provision) (restrictions on Exit from Israel and Entry into It) 2021 (5.2.2021) https://www.nevo.co.il/law_word/law06/tak-9147.pdf. The exceptional grounds for entry of nationals and permanent resident included:

⁵⁵ These included humanitarian or special personal needs, essential need regarding Israel's foreign relations or security, athletes participating in competitive events and holders of an immigrant visa (oleh) or those eligible for immigration rights (aliyah) and whose immigration (Aliyah) cannot be postponed

⁵⁶ Special Powers for Combatting the New Coronavirus (Temporary Provision) (Restrictions on Operating Airports and Flights (14 August 2020) Regulations, reg 30 https://www.nevo.co.il/law_word/law06/tak-8695.pdf. For an up-to-date version of the regulation see https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.nevo.co.il%2F%2Flaw_word%2F502_342.doc&wdOrigin=BROWSELINK.

⁵⁷ https://www.gov.il/en/departments/news/no_exit_from_israel_to_people_needed_isolation_191020.

⁵⁸ Eg https://www.gov.il/en/departments/news/new_evidence_corona_201220.

⁵⁹ Special Powers for Combatting the New Coronavirus Regulations (Temporary Provision) (Restrictions on Operating Airports and Flights) (Amendment) (1 October 2020), https://www.nevo.co.il/law_word/law06/tak-8801.pdf.

⁶⁰ https://www.gov.il/en/departments/news/visas_questions_coronavirus.

- **Exclusion from travel destination restrictions:** On 30 April 2021 the GoI adopted regulations prohibiting exit from Israel to a list of enumerated states, other than by exceptional permit. Israeli Diplomats and holders of foreign diplomatic or service passports, diplomatic or service visas, or persons registered in the Ministry of Foreign Affairs as diplomatic or consular staff were excluded from these regulations.⁶¹
- **Exclusion from border crossing restrictions:** From time to time the minister of interior declared the temporary closure of land border crossings. On 5 February 2021 the GoI adopted Regulation restricting exit from Israel through specific land border crossings.⁶² Diplomats have since been exempted from these restrictions.⁶³

Nationals and permanent residents

- **Legislative framework:** On 4 February 2021 the Temporary Provision Law was amended,⁶⁴ empowering the government to limit, during a SEDC, entry into Israel and exit from it, except for the exit of non-national non-residents. According to the amendment, such limitations may be permitted only if the government is convinced, based on an epidemiological opinion by the ministry of health, relating to morbidity rates outside Israel, that there is an increased risk of arrival of infected persons to Israel, and that their entry may cause a significant exacerbation of the morbidity level in Israel; that there are no alternative means; and only if the government has considered the need for such limitations against the right to entry into Israel and exit from it. The Law establishes an exceptions committee to consider individual cases.

Exit

- **Restrictions on exit:** On 5 February 2021 the GoI adopted regulations imposing a general prohibition on exit from Israel extending to Israeli nationals and Israeli residents (unless residing abroad), other than by individual permit from an exceptions committee.⁶⁵ According to the

⁶¹ Special Powers for Combatting the New Coronavirus Regulations (Temporary Provision) (Restrictions on Exit from Israel), 2021 (30 April 2021), https://www.nevo.co.il/law_word/law06/tak-9346.pdf.

⁶² Special Powers for Combatting the New Coronavirus (Temporary Provision) (Restrictions on Exit from Israel and Entry into It) (Amendment No 4) Regulations, 2021 (6 March 2021), https://www.nevo.co.il/law_word/law06/tak-9246.pdf.

⁶³ Special Powers for Combatting the New Coronavirus Regulations (Temporary Provision) (Restrictions on Exit from Israel and Entry into It) (No 2), 2021 (29 March 2021) reg 2 relating to Taba, https://www.nevo.co.il/law_word/law06/tak-9300.pdf.

⁶⁴ Section 7A as added by the Special Powers for Combatting the New Coronavirus (Temporary Provision) (Amendment No 6) (4 February 2021), https://www.nevo.co.il/Law_word/law14/LAW-2901.pdf.

⁶⁵ Special Powers for Combatting the New Coronavirus Regulations (Temporary Provision) (Restrictions on Exit from Israel and Entry into It), 2021 (5 February 2021) https://www.nevo.co.il/law_word/law06/tak-9147.pdf.

regulations exit permits could be available on an enumerated list of 7 enumerated grounds.⁶⁶ The regulations expired on 20 March 2021.⁶⁷

Entry

- **Restrictions on entry:** According to the same regulations, no person could enter Israel other than by permit granted by the exceptions committee. Such permits could be available to Israeli nationals or permanent residents, as well as to spouses or parents of Israeli nationals or permanent residents, on an enumerated list of 8 grounds.⁶⁸ Over the course of the following month the exceptions were modified.
- On 18 February 2021 the regulations were amended (effective 21 February) to allow public flights to or from New York and Frankfurt, as well as non-public flights receiving permission and required for the taking management of Israel's foreign relations or national security; for carrying professional sportspersons to an international competitive event; for bringing *olim* (immigrants eligible for citizenship under Israel's Law of Return; or required for humanitarian or special reasons. The maximum number of passengers was set at 2000 arrivals and 2000 departures daily.⁶⁹
- On 7 March 2021 the requirement of entry permit was lifted until 20 March for holders of Israeli passports or laissez passer for permanent residents may enter without prior permit.⁷⁰ In addition, persons recovering from COVID-19 or vaccinated were exempted from the requirement of a permit from the exceptions committee.⁷¹ The list of ports of departure and destination was extended to eight locations worldwide, but the number of daily entries and departures remained under quota to be determined according to the air travel outline and to the scope of flights that will be determined by the Ministry of Transportation in coordination with the Ministry of Health.

⁶⁶ These included receipt of urgent medical care, attending funerals of first degree relatives, assistance to first-degree relatives in distress, attending legal process, essential purpose relating to Israel's foreign relations or security, athletic events, and humanitarian or special personal needs that require exit from Israel (reg 4).

⁶⁷ Special Powers for Combatting the New Coronavirus Regulations (Temporary Provision) (Restrictions on Exit from Israel and Entry into It) (Amendment No 4), 2021 (6 March 2021) https://www.nevo.co.il/law_word/law06/tak-9246.pdf.

⁶⁸ These included receipt of urgent medical care, attending funerals of first degree relatives, assistance to first-degree relatives in distress, attending legal process, women in third trimester of pregnancy, essential purpose relating to Israel's foreign relations or security, and lawful exit for residents of Israel (regs 5 (a), 6).

⁶⁹ Special Powers for Combatting the New Coronavirus Regulations (Temporary Provision) (Restrictions on Operating Airports and Flights) (Amendment No 12) (21 February 2021), https://www.nevo.co.il/law_word/law06/tak-9192.pdf.
⁷⁰ https://www.gov.il/he/departments/news/israel_vote.

⁷¹ Special Powers for Combatting the New Coronavirus Regulations (Temporary Provision) (Restrictions on Exit from Israel and Entry into It) (Amendment No 4) (n 62) adding s 2(2b) to the main regulations.

This quota will also include passengers entering through the land border crossings.⁷² Non-public flights upon permission were expanded to include travel to Israel of essential foreign workers.⁷³

- On 18 March 2021 the Supreme Court sitting as High Court of Justice held that the limitations on entry of Israeli nationals and permanent residents were unconstitutional and could not be extended beyond their expiration date of 20 March.⁷⁴

Demonstrations

- The only specific additional restriction provided in the 30 September 2020 amendment to the Temporary Provision Law, introducing a ‘Special State of Emergency due to Coronavirus’ (SSE),⁷⁵ was the exclusion of participation in a demonstration from the exceptional circumstances allowing individuals to distance themselves from home, so that participation in a demonstration would be permitted only within the same distance from home as any other activity.
- The amendment contained a declaration of an SSE which remained in force until 13 September.⁷⁶ Since distancing from home was limited at the time to 1000 meters, the declaration effectively prohibited demonstrations at a distance of more than 1000 meters from one’s home. On 4 April 2021 the Supreme Court sitting as High Court of Justice ruled that the restrictions on distancing from the home for the purpose of demonstration was disproportionate and therefore unconstitutional.⁷⁷

Medical Treatment

⁷² Ministry of Health, Outline for Israel International Air Travel Effective Sunday, 7.3.2021 <https://www.gov.il/en/departments/news/02032021-02>.

⁷³ Special Powers for Combatting the New Coronavirus Regulations (Temporary Provision) (Restrictions on Operating Airports and Flights) (Amendment No 13) (6 March 2021), https://www.nevo.co.il/law_word/law06/tak-9249.pdf.

⁷⁴ HCJ 1107/21 *Shemesh v Prime Minister* (17 March 2021).

⁷⁵ Special Powers for Combatting the New Coronavirus Regulations (Temporary Provision), 2020 (Amendment No 2) (30 September 2020) https://www.nevo.co.il/law_word/law14/law-2860.pdf.

⁷⁶ *ibid* s 8, incorporated as s 51 of the main law, extended on 6 October by cabinet decision https://www.gov.il/BlobFolder/legalinfo/kor-leg01/he/subjects_corona_%D7%94%D7%90%D7%A8%D7%9B%D7%AA_%D7%94%D7%94%D7%9B%D7%A8%D7%96%D7%94_%D7%A2%D7%9C_%D7%9E%D7%A6%D7%91_%D7%97%D7%99%D7%A8%D7%95%D7%9D_%D7%9E%D7%99%D7%95%D7%97%D7%93.pdf.

⁷⁷ HCJ 5469/20 *National Responsibility – Israel my Home v Government of Israel* (4 April 2021), <https://supremedecisions.court.gov.il/Home/Download?path=HebrewVerdicts%5C20%5C690%5C054%5Cv06&file Name=20054690.V06&type=2>.

Israel

- Israel is taking part in the COVAX alliance.⁷⁸

Treatment of populations lacking immigration status

- The Head of the Medical Directorate in the Ministry of Health has instructed the general hospitals to provide any necessary response to persons lacking immigration status in Israel and persons from marginalised populations. She also noted that Magen David Adom should offer a response to this population as to any resident.⁷⁹
- In a later correspondence the Head of the Medical Directorate in the Ministry of Health instructed the general hospitals and Magen David Adom that patients suspected of being infected or confirmed as infected must be admitted for treatment, even if the patient cannot pay and has no insurance. This instruction refers inter alia to infiltrators/asylum seekers and foreign/migrant workers.⁸⁰
- On 24 December 2020 the Population and Immigration Authority stated based on information from the ministry of Health that foreign workers in the home-based caregiving sector who are insured by their employers are entitled to be vaccinated with their employers regardless of their national health insurance status. Furthermore, the ministry of health is intending to vaccinate all foreign workers in Israel regardless of their medical insurance.⁸¹

⁷⁸ WHO, 'WHA 73rd Session, Yuli Edelstein Minister of Health, State of Israel' 10 November 2020 <https://apps.who.int/gb/statements/WHA73_RESUMED/PDF/Israel-13.pdf> accessed 17 March 2021; <https://www.who.int/news/item/15-07-2020-more-than-150-countries-engaged-in-covid-19-vaccine-global-access-facility>, <https://www.who.int/news/item/24-08-2020-172-countries-and-multiple-candidate-vaccines-engaged-in-covid-19-vaccine-global-access-facility>.

⁷⁹ Head of the Medical Directorate in the Ministry of Health Dr Vered Ezra, 'Treatment of statusless populations and marginalised populations – following the COVID-19 pandemic', letter to Directors of the General Hospitals and the Director General of Magen David Adom (16 March 2020) (on file with project director).

⁸⁰ Head of the Medical Directorate in the Ministry of Health Dr Vered Ezra, 'Admittance to treatment and collection of Payment from statusless Corona patients and marginalised populations', letter to Directors of the General Hospitals and the Director General of Magen David Adom (13 April 2020) (on file with project director).

⁸¹ Foreign Workers Administration Director in the Population and Immigration Authority Inbal Mashash, 'Important Notice Regarding Corona Vaccination to Foreign Workers in the Home-Based Caregiving Sector' (24 December 2020), https://www.gov.il/BlobFolder/policy/important_notice_for_foreignworkers_in_caregiving_due_to_corona_dec20/he/%D7%94%D7%95%D7%93%D7%A2%D7%94%20%D7%97%D7%A9%D7%95%D7%91%D7%94%20%D7%91%D7%A0%D7%95%D7%A9%D7%90%20%D7%97%D7%99%D7%A1%D7%95%D7%A0%D7%99%20%D7%A7%D7%95%D7%A8%D7%95%D7%A0%D7%94%20%D7%9C%D7%A2%D7%95%D7%91%D7%93%D7%99%D7%9D%20%D7%96%D7%A8%D7%99%D7%9D%20%D7%91%D7%A2%D7%A0%D7%A3%20%D7%94%D7%A1%D7%99%D7%A2%D7%95%D7%93.pdf.

- On 30 December 2020 the Ministry of Health declared that persons present in Israel who are over 60 years old have been prioritised for vaccination similarly to Israeli nationals their age.⁸²
- On 21 January 2021 the Director of the Section for Policy Planning in the Ministry of Health Dr. Shlomit Avni announced that the Committee on Vaccines and the Director-General of the ministry of health have confirmed a decision to vaccinate all status-less persons whose center of life is in Israel and qualify under the age prioritization schedule.⁸³
- Asylum seekers: On 9 February the Municipality of Tel Aviv opened a vaccination center for asylum seekers and migrant workers age 16 and upwards at no cost. Over 20,000 persons have been vaccinated.⁸⁴
- On 10 February 2021 the Ministry of Health decided that vaccines would be provided to persons lacking immigration status providing proof of being present in Israel half a year or longer, as well as to any person lacking immigration status over the age of 50.⁸⁵

West Bank and Gaza

Health services in West Bank and Gaza - general

Legal obligations:

- On various occasions the GoI stated that⁸⁶

under the Interim Agreement, the responsibility and authorities in the health sphere with regard to the whole of the Palestinian population in Judea and Samaria and the Gaza Strip have been transferred to the Palestinian Authority. Accordingly, the responsibility for containing and addressing the spread of COVID-19 in these territories lies with the Palestinian Authority. Furthermore, in 2007 the Hamas took over the Gaza Strip through a military coup, and the medical response to residents of the Strip is provided also through the Gazan health authorities, that are subject to the Hamas terrorist organization. In this state of affairs, Israel

⁸² Head of the Directorate for Preparation of the Health System in the Ministry of Health Dr Tarif Bader, 'Vaccination of Persons present I Israel over 60 Years Old), letter to Heads of medical centers and other Medical Officials, 30 December 2020 (on file with project director).

⁸³ Director of the Section for Policy Planning in the Ministry of Health Dr Shlomit Avni, email to Zoe Gutzeit from Physicians for Human Rights (21 January 2021) (on file with project director).

⁸⁴ Announcement on file with project director. Eligible for vaccination are asylum seekers with a visa under s 2(a)(5) of the Entry into Israel Law, 1952 or B1 work visa holders, as well as migrant workers who entered the country prior to March 2020, <https://www.tel-aviv.gov.il/en/Pages/ArticlePage.aspx?WebID=9336473c-1537-4ab6-8a69-d299b5db8bcc&ListID=b4eda22c-a69a-4bef-9479-05d5a832ad16&ItemID=156>.

⁸⁵ Assistant to Head of Center for Control of the Combat of Corona, Ministry of Health, Snir Levi, 'Status Report regarding Vaccination of Statusless Persons', 10 February 2021, (on file with project director).

⁸⁶ HCJ 2669/20 PHR v Minister of Health, State Response, 6 May 2020 para 3; HCJ 2171/21 PHR v Government of Israel, Preliminary State Response, 9 May 2021, para 6 (on file with project director) (hereafter 'HCJ 2171/21 Preliminary State Response').

acts in cooperation and coordination with the relevant Palestinian Authority organs and various actors in the international scene, to provide a plentiful and varied assistance for the Palestinian population's combatting COVID-19. All this, far beyond Israel's obligations under law.

The High Court of Justice noted that *prima facie*, the State of Israel acts in a variety of fashions, including far beyond the required in the circumstances.⁸⁷

- Similarly, in February 2021 the GoI stated that ,under the Israeli-Palestinian Interim Agreement regarding the West Bank and Gaza Strip signed in September 1995, the responsibility and authorities in the health sphere with regard to the Palestinian population the Gaza Strip are in the hands of the Palestinian Authority, who bears the responsibility to respond to health needs of this population; the medical response to Gaza residents is given in practice by the Gaza health authorities, who are since 2007 subject to the Hamas regime'.⁸⁸
- The GoI repeated its consistent view that international human rights treaties to which Israel is party do not apply outside its sovereign territory.⁸⁹

Policy:

- At the end of January 2021 Israel stated that it has 'a vested interest in ensuring the vaccination of the population of the Palestinian Authority, while assuring the Palestinian Authority maintains its own fully functioning health system'.⁹⁰
- Israel 'remains committed to actively promoting and improving health standards globally and regionally by strengthening the close collaboration with all partners, including the Palestinians, to ensure adequate preparedness and response to the current pandemic'.⁹¹
- 'Given the daily contact between the two populations, the epidemiological position of the ministry of health is that the territory of the State of Israel and the Palestinian Authority is one unit from an epidemiological perspective, given the size and geopolitical composition of the territory.

⁸⁷ HCJ 2669/20 *PHR v Minister of Health* (7 May 2020), <https://supremedecisions.court.gov.il/Home/Download?path=HebrewVerdicts%5C20%5C690%5C026%5Co02&file Name=20026690.O02&type=2>.

⁸⁸ HCJ 9284/20 Goldin v Government of Israel, Preliminary State Response, 8 February 2021, para 37 (hereafter 'HCJ 9284/20 Preliminary State Response').

⁸⁹ HCJ 2171/21 Preliminary State Response (n 86) para 16.

⁹⁰ Permanent Mission of Israel, UN-Geneva, Statement by Israel, COVID-19 Response and WHO's Work in Health Emergencies (Item 14.1 and 14.2), WHO Executive Board 148th Session' https://mfa.gov.il/MFA/InternatOrgs/Documents/EB148-Item14-COVID19%20Response_Israel.pdf.

⁹¹ WHO, 'WHO WHA 73 Reply to the Statement by the Observer Delegation of the Palestinian Authority' 25 May 2020, <https://apps.who.int/gb/statements/WHA73/PDF/Israel2.pdf>.

Accordingly, from a narrow epidemiological perspective the areas of the Palestinian Authority in Judea and Samaria should be regarded as one territory with the State of Israel. Therefore, the position of the ministry of health is that Israel sees value and health benefit in the Palestinian Authority coping successfully with the pandemic and accordingly also in the Palestinian population in Judea and Samaria being for the most part vaccinated. Since the crossing over between Israel and the Gaza Strip are limited, the risk of infection from the Gaza Strip territory into Israel is lower, but still exists.⁹²

West Bank

General:

- Efforts undertaken by the GoI to assist in curbing the spread of COVID-19 with regard to the Palestinian Authority/West Bank include calling on the international community to support the United Nations 90-day programme and direct international aid so that the Palestinian Authority can be better equipped to manage the COVID-19 crisis; Joint consultations and deliberations between expert-level officials from Israel, UN and PA; Training and guidance of Palestinian medical teams, and delivery of medical supplies to the Palestinian Authority.⁹³
- Israel maintains continuous contact with Palestinian authorities to consider assistance with combatting COVID-19, and requests as for vaccines and other forms of assistance are considered in light of relevant considerations.⁹⁴

Provision of medical supplies from Israel and third parties to the West Bank:

- Israel has transferred to the Palestinian health ministry 1950 testing kits and 2400 nasal swabs. In addition, international donations including from the WHO have been transferred to the Palestinian Authority including emergency room beds, respirators and auxiliary equipment, testing kits and swabs, medication and perishable medical supplies.⁹⁵

⁹² HCJ 2171/21 Preliminary State Response (n 86) para 52.

⁹³ Identical letters dated 17 April 2020 from the Permanent Representative of Israel to the United Nations addressed to the Secretary-General and the President of the Security Council, UN Doc S/2020/317, 17 April 2020, <https://www.un.org/unispal/document/letter-from-israel-to-the-secretary-general-and-security-council-president-on-efforts-to-combat-the-covid-19-virus/>.

⁹⁴ HCJ 9284/20 Preliminary State Response (n 88) para 47; HCJ 2171/21 Preliminary State Response (n 86), para 62.

⁹⁵ HCJ 2171/21 Preliminary State Response (n 86) paras 44, 48.

Vaccination of Palestinians employed in Israel and in Israeli settlements:

- On 10 February 2021 the Ministry of Health decided that vaccines would not be provided to Palestinians employed in Israel, whether holding a work permit or otherwise.⁹⁶
- On 8 March 2021 the ministry of health and the military authorities began a vaccination campaign at various crossings and Israeli industrial areas across the West Bank, for Palestinian employees who hold a valid work permit in Israel or in the Israeli settlements in the West Bank.⁹⁷ Over the course of the following two weeks, every employee who wishes to do so will be able to be vaccinated at one of the vaccination stations in the crossings, in coordination with their employer and the relevant government authorities.⁹⁸ By 29 April 2021, over 104,000 Palestinians holding employment licenses had received the second dose of the vaccines and some 3000 others received a first dose.⁹⁹
- Some 4000 Palestinian have been vaccinated under Israeli frameworks (medical teams, teachers and persons insured under national health insurance).¹⁰⁰

Provision of vaccines from Israel to the West Bank:

- Following a request of the Palestinian Authority, in January 2021 Israel provided, as a humanitarian gesture, vaccines for 100 medical personnel over 60 years old who are treating COVID-19 patients in the West Bank (2 batches of 100 doses). Subsequently, the Israeli authorities transferred 5000 vaccine doses to medical teams in the Palestinian Authority.¹⁰¹

⁹⁶ Assistant to Head of Center for Control of the Combat of Corona, Ministry of Health, Snir Levi, 'tatus Report regarding Vaccination of Statusless Persons (10 February 2021), (on file with project director).

⁹⁷ COGAT, 'Today, a Vaccination Campaign for Palestinian Workers Began at Various Crossings across Judea and Samaria, and Will Continue Tomorrow in Israeli Industrial Areas as Well. <https://t.co/AZkMaC6MTQ>' (@cogatonline, 8 March 2021) <https://twitter.com/cogatonline/status/1369043569915363335>; Ministry of Health Spokesperson, 'Vaccination Campaign for Palestinian Employees Holding a Valid Work Permit', 3 March 2021, <https://www.gov.il/he/departments/news/03032021-01>.

⁹⁸ 'Israel Begins Vaccination Campaign for Palestinian Workers 8 March 2021' https://mfa.gov.il/MFA/PressRoom/2021/Pages/Israel-begins-vaccination-campaign-for-Palestinian-workers-8-March-2021.aspx?utm_source=InforuMail&utm_medium=email&utm_campaign=Israel+begins+vaccination+campaign+for+Palestinian+workers+8+March+2021+%282%29.

⁹⁹ HCJ 2171/21 Preliminary State Response (n 86) para 70.

¹⁰⁰ *ibid* para 67.

¹⁰¹ *ibid* para 64.

- On 23 February 2021 the Office of the Prime Minister stated that ‘[d]ue to the accumulation of a limited quantity to unused vaccines, it has been decided to assist Palestinian Authority medical teams and several of the countries that contacted Israel with a symbolic quantity of vaccines’.¹⁰²
- On 18 June 2021 the GoI announced that Israel and the Palestinian Authority have reached agreement on a barter of vaccine doses, according to which Israel will transfer to the Palestinian Authority about a million doses that are about to expire, in exchange for Pfizer’s next shipment to the Palestinian Authority, due in September-October 2021.¹⁰³

Transfer of vaccines from third parties to the West Bank:

- Under the Interim Agreement, importation of pharmaceuticals to the West Bank are subject to the regulatory framework applicable in Israel. Requests for importation of pharmaceuticals (through COGAT and the taxation authority to the ministry of health) are generally approved from the medical regulatory aspect very quickly. Vaccine donations are exempted from the regular approval procedure and are approved immediately.¹⁰⁴ The medical regulatory framework does not hinder the Palestinian Authority from purchasing vaccines that have not been approved for importation for use within Israel.¹⁰⁵
- According to COGAT, over the months of February and March 2021, 223,140 vaccination doses were transferred to the Palestinian Authority through WHO under COVAX, from China, from the Serum Institute India and from Russia.¹⁰⁶ In late May and early June 2021, 218,560 additional doses were transferred from COVAX, UNICEF, WHO and Qatar. Additional requests for transfer of vaccines are under review and in the absence of security obstacles the tendency is to approve them.¹⁰⁷

¹⁰² Ministry of Foreign Affairs, Prime Minister’s Office Statement, <https://mfa.gov.il/MFA/PressRoom/2021/Pages/Prime-Minister-s-Office-statement-23-February-2021.aspx>.

¹⁰³ Joint announcement by the office of the prime minister, the ministry of health and the ministry of defence, 18 June 2021, https://www.gov.il/he/departments/news/spoke_vaccines180621. According to reports, on 20 June 2021 officials in the Palestinian health ministry said that they intend to return 90,000 vaccines to Israel which were set to expire in 10 days. Jonathan Lis, ‘Three Countries Ask Israel for COVID Vaccines if Palestinians Nix Deal, Source Says’, Haaretz (20 June 2021) <https://www.haaretz.com/israel-news/.premium-source-israel-in-talks-with-three-countries-over-vaccines-intended-for-palestinians-1.9923533>.

¹⁰⁴ HCJ 2171/21 Preliminary State Response (n 86) paras 29-31.

¹⁰⁵ *ibid* para 39.

¹⁰⁶ *ibid* para 58-60.

¹⁰⁷ *ibid* para 58-60 and HCJ 2171/21 PHR v Government of Israel, Updated State Response, 10 June 2021, para 4 (on file with project director) (hereafter ‘HCJ 2171/21 Updated State Response’).

- According to COGAT, in late May and early June 2021 Israel provided 145,300 doses purchased by the Palestinian Authority.¹⁰⁸

Movement of COVID-19 patients from Israel to the West Bank

- Israel coordinated with the Palestinian Authority the transfer of Palestinians suspected or confirmed as carrying COVID-19 patients from Israel to the West Bank, and provided the Palestinian Authority with names of Palestinians entering Israel so that they can be isolated and monitored once they have entered the West Bank.¹⁰⁹

Gaza

General:

- Efforts undertaken by the GoI to assist in curbing the spread of COVID-19 include delivery of testing and protection kits to the Gaza Strip, and willingness to assist in laboratory testing; and maintaining commercial crossings into Gaza open for the transfer of goods and assistance.¹¹⁰

Transfer of medical supplies to Gaza:

Legal obligations:

- 'Israel recognises that the international law of armed conflict applies to the conflict between Israel and Hamas in Gaza. According to these laws, Israel is obligated to allow neutral third parties to transfer equipment and vital medical response to the civilian population in Gaza, including life-saving vaccines, subject to security considerations'.¹¹¹

Practice:

¹⁰⁸ HCJ 2171/21 Updated State Response, *ibid*, para 4.

¹⁰⁹ HCJ 2171/21 Preliminary State Response (n 86) para 45.

¹¹⁰ Identical letters dated 17 April 2020 from the Permanent Representative of Israel to the United Nations addressed to the Secretary-General and the President of the Security Council, UN Doc S/2020/317, 17 April 2020, <https://www.un.org/unispal/document/letter-from-israel-to-the-secretary-general-and-security-council-president-on-efforts-to-combat-the-covid-19-virus/>.

¹¹¹ HCJ 9284/20 Preliminary State Response (n 88) para 36; HCJ 2171/21 Preliminary State Response (n 86) para 20.

- ‘Israel facilitates transfer of provisions and assistance to Gaza, subject to security considerations and technical arrangements’.¹¹² Israel allows entry of medical teams subject to a security check.¹¹³
- With regard to dual-use items that under the law require export permit in order to be transferred to Gaza, some relaxations have been approved in light of changing circumstances and concrete needs.¹¹⁴ Vaccines against Covid-19 are not regarded as dual-use items.¹¹⁵
- Numerous and varied additional measures, have been taken relating to addressing COVID-19 in Gaza that cannot be divulged due to a danger of harming Israel’s foreign relations’.¹¹⁶

Provision of vaccines from Israel to Gaza:

- As of 10 May 2021, Israel did not intend to provide vaccines to Gaza.¹¹⁷

Transfer of vaccines from the Palestinian Authority and third parties to Gaza:

- ‘The prime minister has confirmed that the Palestinian Authority should not be prevented from transferring vaccines to Gaza, provided that those are not funded by Israel or emanating from Israeli stocks’.¹¹⁸
- ‘Should a request be made by neutral third parties, or by the Palestinian Authority who has the authorities under the Interim Agreement in this context, Israel is obligated under the laws of war in light of the armed conflict between Israel and Hamas and other terrorist groups in Gaza, to allow entry of the said vaccines into Gaza, subject to security considerations’.¹¹⁹
- On 4 February 2021 the Palestinian Authority received a shipment of Sputnik vaccines (anticipated at 5,000 according to earlier reports) by donation from the Government of Russia. On the same

¹¹² HCJ 2171/21 Preliminary State Response (n 86) para 20. In February 2021 the GoI reported that during the period from 10 March 2020 (when closure on the West Bank was declared) until 31 December 2020, 42 of 43 requests for access to Gaza of foreign medical teams were approved, 5090 requests for entry into Israel from Gaza were submitted to Israel. Under coordination for transfer of assistance to Gaza, the following equipment was transferred between 10 March and 1 November 2020, 2 tons of sterilisers, 230,000 nasal swabs and examination kits, 83,480 reagents, 10 respirators, 27 oxygen generators, 58 respirators [sic], 8 corona testing machines, thousands of N95 masks, 700,000 chirurgical masks and tens of thousands of protective gear items and medicines. HCJ 9284/20 Preliminary State Response (n 88) para 42.

¹¹³ HCJ 2171/21 Preliminary State Response (n 86) para 49.

¹¹⁴ HCJ 2669/20 PHR v Minister of Health, State Response, 6 May 2020 para 36 ((cited in HCJ 9284/20 Preliminary State Response (n 88)).

¹¹⁵ HCJ 2171/21 Preliminary State Response (n 86) para 21.

¹¹⁶ HCJ 9284/20 Preliminary State Response (n 88) para 39.

¹¹⁷ HCJ 2171/21 Preliminary State Response (n 86) para 77-78 (earlier see HCJ 9284/20 Preliminary State Response (n 88) para 46).

¹¹⁸ HCJ 2171/21 Preliminary State Response (n 86) para 72.

¹¹⁹ HCJ 9284/20 Preliminary State Response (n 88) para 50; HCJ 2171/21 Preliminary State Response (n 86) para 76.

day the Palestinian Authority requested to transfer 1,000 doses to Gaza. The request was approved by the Israeli authorities and the vaccines were transferred.¹²⁰ Over the course of February and March 2021, 60,000 vaccine doses were provided to Gaza through the border with Egypt, and 11,700 vaccine doses were provided by the WHO under COVAX through Israel.¹²¹ Over the months of April, May and June, 74,200 doses were received in Gaza from UNICEF, COVAX and WHO, as well as 30,000 from the United Arab Emirates, provided through Rafah Crossing (with Egypt). Requests for additional transfers of vaccine doses and diluters have been received, some have already been approved by the ministry of health.¹²²

Entry of COVID-19 patients from Gaza to Israel or passage through Israel to the West Bank:

- In accordance with the general policy regarding entry for medical treatment of Gaza residents into Israel, or through Israel to the West Bank, entry is allowed for life-saving treatment or that without which the quality of life is dramatically harmed, if such treatment is unavailable in Gaza. Requests for such entry are channelled through the Civil Palestinian Committee to the Gaza Liaison office and are considered in light of the policy, of specific security considerations, and political considerations.¹²³
- In February 2021 the GoI noted that requests of COVID-19 patients from Gaza to enter medical treatment in Israel or the West Bank are refused since they do not qualify under the policy approved by the Supreme Court. Furthermore it stated that according to the information available to it, medical treatment for COVID-19 is fully available in Gaza and requests are therefore refused.¹²⁴

Restrictions on legal process

Israel

- **Criminal proceedings in the absence of detainees and prisoners:** On 12 March 2020, Following notification from the Prison Service concerning delays in the transport of detainees, the

¹²⁰ *ibid* para 73.

¹²¹ *ibid* para 74.

¹²² HCJ 2171/21 Updated State Response (n 107) para 4.

¹²³ HCJ 2669/20 PHR v Minister of Health, State's Response (6 May 2020) para 38 (cited in HCJ 9284/20 Preliminary State Response (n 88) para 41); HCJ 9284/20 Preliminary State Response (n 88) paras 33, 44; HCJ 2171/21 Preliminary State Response (n 86) para 49.

¹²⁴ HCJ 9284/20 Preliminary State Response (n 88) para 44.

Magistrate Court in Jerusalem began holding detention hearings in the presence of defence counsel and in the absence of the detainees, in accordance with the law and the consent of all parties.¹²⁵

On 15 March 2020 the GoI adopted emergency regulations allowing the holding of hearings on detention extension in the absence of the detainees and their participation through technological audio and video means.¹²⁶ On 24 March 2020 the GoI adopted emergency regulations allowing video and audio conferencing in additional criminal proceedings, unless the Court's president finds that despite the state of emergency the hearing must be held in the presence of the detainee or prisoner.¹²⁷

- **Release Committees:** On 25 March 2020 the GoI adopted regulations relating to the Committee on Release of Prisoners, addressing bench size, suspension and postponement of hearings, hearings in the absence of prisoners, video conferencing by consent and alternative technological means.¹²⁸
- **Operation of Courts:** On 5 April 2020 the Courts Administrator issued instructions on questioning and masking in courts and tribunals. These instructions resembled the provisions of the generally-applicable emergency regulations, from which the court and tribunal systems were excluded in light of the principle of separation of powers. These instructions were modified and extended periodically until replaced by regulations in September 2020.¹²⁹ On 23 September 2020 The Courts Administrator issued regulations relating inter alia to questioning and temperature measuring, mask requirements, social distancing, secretariat operation, enforcement.¹³⁰
- On **24 December 2020** the Courts Administration announced that beginning 28 December 2020, the courts and tribunals resume hearings in all types of proceedings, while complying with applicable regulations and instructions to protect the health of the public, of the judges and of

¹²⁵ https://www.gov.il/he/departments/general/the_judicial_authority_coronavirus_instructions.

¹²⁶ Emergency Regulations (Detention Hearings), 2020, https://www.nevo.co.il/law_word/law06/tak-8383.pdf. These regulations were subsequently modified, eg Emergency Regulations (New Coronavirus) (Presence of Detainees and Prisoners in Court and Tribunal Hearings (2020) https://www.nevo.co.il/law_word/law19/502_294.doc (17 May 2020) and replaced by later legislation.

¹²⁷ Emergency Regulations (Holding of Criminal hearings Through Technological Means), 2020, https://www.nevo.co.il/law_word/law19/502_270.doc.

¹²⁸ Emergency Regulations (Hearings of Release Committees), 2020, https://www.nevo.co.il/law_word/law19/502_273.doc.

¹²⁹ Eg Instructions on Mask Wearing and Questioning in Courts and Tribunals (12 April 2020) <http://govilmvcdemo.westeurope.cloudapp.azure.com/he/departments/news/spokemenmessage12042020>.

¹³⁰ Special Powers for Combatting the New Coronavirus Regulations (Restrictions in the Court System) (Temporary Provision) 2020, https://www.gov.il/BlobFolder/policy/manager_of_courts_directives_23_20/he/23_20.pdf, extended periodically.

employees.¹³¹ On 7 January 2021 the Courts Administration announced that courts and tribunals will temporarily act to postpone hearing unless the judges consider that postponement is not appropriate.¹³² This instruction was subsequently extended.¹³³

- **Visits to detention and incarceration facilities:** On 15 March 2020 the GoI adopted emergency regulations allowing the minister of internal security to declare a risk of contagion of COVID-19 in Detention Facilities and Prisons. During the period of risk, Legal counsel, and visitors other than ICRC delegates, would not be allowed into detention and incarceration facilities other than to legal proceedings in a court within the facility; in preparation for a scheduled hearing; or otherwise by exceptional permit, taking into account the detainee or prisoner's age. Detainees and prisoners would be able to consult with legal counsel by phone, in privacy and in conditions that ensure the confidentiality of the consultation.¹³⁴ On 2 April 2020 The Courts Administration announced a pilot procedure for holding certain urgent civil proceedings through video conferencing, by consent of the parties.¹³⁵
- **On 15 March 2020** the Courts Administrator issues a notification declaring types of matters that would be exceptionally heard in civil and labour courts during a special state emergency.¹³⁶
- On 22 March 2020 the minister of justice issued a notice applying the Courts and Execution and Collection Offices Regulations (Procedures in a Special State of Emergency), 1991 on magistrate, district and supreme courts.¹³⁷ The scope of matters to be heard in courts was modified occasionally over the following months.¹³⁸

West Bank

¹³¹ https://www.gov.il/he/departments/policies/manager_of_courts_directives_12_20.

¹³² https://www.gov.il/he/departments/policies/manager_of_courts_directives_07_21.

¹³³ https://www.gov.il/he/departments/policies/manager_of_courts_directives_01022021.

¹³⁴ Emergency Regulations (Prevention of Entry of Visitors and Counsel to Detention Facilities and Prisons), 2020, https://www.nevo.co.il/law_word/law01/502_252.doc.

¹³⁵ https://www.gov.il/he/departments/news/spokemanmessage_020420. See also https://www.gov.il/he/departments/general/the_judicial_authority_visual_conferencing_1 (November 2020).

¹³⁶ Courts Administrator's Notice on Types of Matters that would be heard in Courts in accordance with the Courts and Execution and Collection Offices Regulations (Procedures in a Special State of Emergency) 1991 (15 March 2020), https://www.nevo.co.il/law_word/law19/502_278.doc. The term 'Special State of Emergency' was used at this stage in the sense of SEDC (and not in the sense of SSE).

¹³⁷ Minister of justice notices relating to various courts and tribunals under the Courts and Execution and Collection Offices Regulations (Procedures in a Special State of Emergency), 1991 https://www.nevo.co.il/law_word/law10/yalkut-8765.pdf (22 March 2020), extended periodically until 17 May 2020, <https://www.gov.il/he/departments/news/spokemenmessage08042020>.

¹³⁸ https://www.gov.il/he/departments/general/the_judicial_authority_coronavirus_instructions.

- **Criminal proceedings in the absence of detainees and prisoners:** On 5 April 2020 the Military Commander in the West Bank issued an order (extended subsequently) which provide for holding criminal hearings in the absence of the detainee or prisoner unless the president of the military court instructs otherwise. In such hearings video and audio conferencing will be used if the presence of the detainee or prisoner is required by law.¹³⁹ A later order provides that the number of detainees and prisoners brought to the military courts daily would be the maximum permitted according to the ministry of health's recommendations.¹⁴⁰
- **Visits to detention and incarceration facilities:** On 22 March 2020 the Military Commander in the West Bank issued an order according to which Legal counsel would not be allowed into detention and incarceration facilities other than to legal proceedings in a court within the facility; in preparation for a scheduled hearing; or otherwise by exceptional permit, taking into account the detainee or prisoner's age. Detainees and prisoners would be able to consult with legal counsel by phone, in privacy and in conditions that ensure the confidentiality of the consultation. Visitors other than representatives of the ICRC and providers of professional service required by law would not be allowed into detention and incarceration facilities, other than by exceptional permit, taking into account the detainee or prisoner's age.¹⁴¹

¹³⁹ Order regarding Holding of Criminal Hearings through Technological Means (Temporary Provision) (Judea and Samaria) (No 1842), 2020), https://www.nevo.co.il/law_word/law65/666_122.doc (extended periodically until 9 May 2021).

¹⁴⁰ Order regarding Presence of Detainees and Prisoners in Hearings in the Military Courts (Temporary Provision) (Judea and Samaria) (No 1888) (24 May 2020), https://www.nevo.co.il/law_word/law65/666_125.doc, extended periodically most recently until 17 June 2021.

¹⁴¹ [Order regarding Prevention of Entry of Visitors and Lawyers into Detention and Incarceration Facilities \(Temporary Provision\) \(Judea and Samaria\) \(No 1831\) 2020](#), extended by Orders 1853, 1882, 1892. The order expired on 8 June 2020.