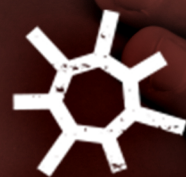


THE RIGHT TO VACCINE:

Dealing with Vaccine Hesitancy

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Israel, April 2021

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PHYSICIANS FOR **דו"כאים**
לזכויות אדם **لحقوق الإنسان**

THE RIGHT TO VACCINE:

Dealing with Vaccine Hesitancy

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SUMMARY

This policy paper of the Zulat Institute, co-authored with Physicians for Human Rights (PHR), is a continuation of the policy paper titled *The Right to Vaccination: Dealing with the Violation of the Right to Vaccines* published in January 2021. In view of the vaccination campaign in Israel, which started out with extraordinary demand for a vaccine and has now run into "vaccine hesitancy," we would like to discuss the principles by which this phenomenon should be dealt with from a human and social rights perspective. Our examination of the methods used so far to address vaccine hesitancy has yielded practical recommendations for decision-makers.

Making entry into businesses or public places contingent upon the presentation of a "green pass" showing that a person has been vaccinated or recovered from Covid-19, creates tension between the rights of the individual and the public interest and is problematic as a means of promoting vaccine compliance, though required in light of the benefits for reopening the economy amid a pandemic.

However, Zulat and PHR would like to caution against the slippery slope of expanding existing legislation to allow such conditionality even after the pandemic, in order to motivate a high compliance rate to vaccination against the coronavirus or other infectious diseases. To this end, our expert team recommends advancing legislation that regulates all vaccination policy in Israel, including the allocation of resources and manpower for advocacy efforts, computerization, and accessibility of vaccines to underprivileged populations.

Following are the main policy recommendations to be presented in this paper:

Protection of Individual Rights

- The medical record showing that a person has chosen to be vaccinated or not is confidential information, which should not be passed on to others without consent. Legislation that infringes on medical confidentiality before other options for promoting vaccine compliance have been exhausted is disproportionate.
- Requiring a "green pass" from teaching staff to enter the classroom, to the extent that it is necessary, should be approved in primary legislation or at least by the government, and not by the heads of local authorities.

Building Trust

- Strict transparency is required in decision-making about vaccination policy. In this context, the minutes of the meetings of the Corona Cabinet should be publicized.
- Decisions should be made on the basis of professional criteria, and information should be given to the public about the rationale behind each decision.

Commitment to Social Justice: Equitable Access to Vaccines

- People should be allowed to come to the vaccination centers without having to make an appointment online.
- Fake news in Arabic, Russian, and Amharic social media platforms should be amended.
- Primary care physicians and nursing staff at HMOs should be instructed to provide information to patients about the vaccine and encourage vaccination.
- HMOs should be compensated for any wages paid to medical staff working overtime to promote vaccine compliance.
- Legislation should be promoted that regulates vaccination policy in Israel and stipulates the allocation of resources and manpower for advocacy efforts,

computerization, and accessing vaccines to underprivileged populations, including in peripheral areas.

The operation against the coronavirus in Israel was initially characterized by a demand for vaccines that exceeded the HMOs' daily supply. As of 31 March 2021, a considerable part of the at-risk population had been vaccinated. However, compliance among this group and the general population has not been full (according to Health Ministry data, 90.6% of those aged 80–89, 93.6% of those aged 70–79, 84% of those aged 60–69 had been vaccinated with the two required vaccine doses).

"Vaccine hesitancy," which characterizes most people who have yet to get vaccinated, is a continuum of attitudes ranging from active demand to total opposition by an extreme minority. The reasons for it may be fear of bodily damage mainly due to the speedy development of the vaccine, inconsistent guidelines (e.g., regarding vaccination of women of childbearing age), reluctance about an invasive procedure that impairs bodily integrity, accessibility, linguistic, and cultural barriers, lack of trust in the health system and the establishment as a whole, misinformation on social media, or doubt about the effectiveness of the vaccine against new variants of the virus.

The principles for addressing vaccine hesitancy are to show understanding and to convince the public that high compliance with vaccination is a common good. Such high compliance does not only protect the individual from morbidity and mortality, but is an act of social solidarity. Other key principles are transparency and professionalism in the decision-making process conducive to trust building, equitable access to vaccines, prioritizing underprivileged groups based on the principle of social justice, and protecting the individual from disproportionate violation of his rights.

Israel's corona vaccination policy has largely been a source of pride. However, some of the decisions made do not conform to the principles presented above. The Public Security Minister's decision not to follow the prioritization rules with regard to the vaccination of prisoners, or the decision not to provide vaccines to the Palestinian Authority in parallel with the vaccination of Israeli citizens, undermines public confidence that decisions are based on professional epidemiological considerations.

The belated opening of vaccination stations for the Arab population and the fact that vaccine compliance in Arab localities has been lower compared to Jewish localities contravenes the principle of social justice and the aspiration to equitable access to vaccines.

The 2021 Public Health Ordinance Amendment No. 36 (Temporary Provision–New Corona Virus), which allows the disclosure of information about vaccinees to diverse public bodies in order to assist in the promotion of the national vaccination campaign, disproportionately violates the individual's right to medical confidentiality, undermines the public's trust in the health authorities' commitment to ethical rules, and does not advance a sense of solidarity and collective commitment to the common good.

The Zulat-PHR expert team recommends advancing legislation that regulates all vaccination policy in Israel, including the allocation of resources and manpower for advocacy efforts, computer infrastructure, and accessibility of vaccines to underprivileged population groups.

INTRODUCTION

In January 2021, upon the approval of the coronavirus vaccine and the start of the vaccination campaign in Israel, we published [*The Right to Vaccination: Dealing with the Violation of the Right to Vaccines*](#), a policy paper that addressed the development, purchase, and public rollout of the vaccine, as well as prioritization aspects and a proper decision-making model.

The current policy paper, *The Right to Vaccination: Dealing with Vaccine Hesitancy*, was written in March 2021 in the midst of the vaccination campaign, with the purpose of shedding light on aspects of human and social rights in decisions concerning the promotion of vaccine response, examining the steps taken so far to deal with vaccine hesitancy, and offering practical proposals to decision-makers. The paper includes chapters on "vaccine hesitancy" in Israel, key principles for addressing the phenomenon, a critical review of the interventions made so far, and practical recommendations.

The team of experts, led by Dr. Shelly Kamin-Friedman, includes (in alphabetical order): Dr. Hagai Boas, Prof. Nadav Davidovitch, Prof. Danny Filc, Prof. Khtam Mohsen, Dr. Carmel Shalev, and Ms. Hadas Ziv. The paper is based on the knowledge of these experts, as well as on position papers, research, and press articles.

BACKGROUND

By March 2021, the world has been dealing with the corona pandemic for over a year. At this stage of the experience, defined as "pandemic frustration," it is clear that attempts to gain control of the virus through social distancing, bans on large gatherings, and lockdowns entail an enormous economic and social cost.¹

The coronavirus vaccines produced by Pfizer and Moderna, which were approved for use in Israel, and vaccines produced by other companies approved for use around the world, are "tie-breaking" tools in the battle against the pandemic. Vaccinating a high proportion of the population may reduce the need for the restrictions imposed to date and enable the reopening of the economy, including the education, culture, and business systems.

Although the purchase agreements are confidential, according to media reports² Israel purchased 10 million vaccines from Pfizer (providing for the vaccination of 5 million people) and an unspecified number from Moderna. Therefore, there is no shortage of vaccine doses in Israel.

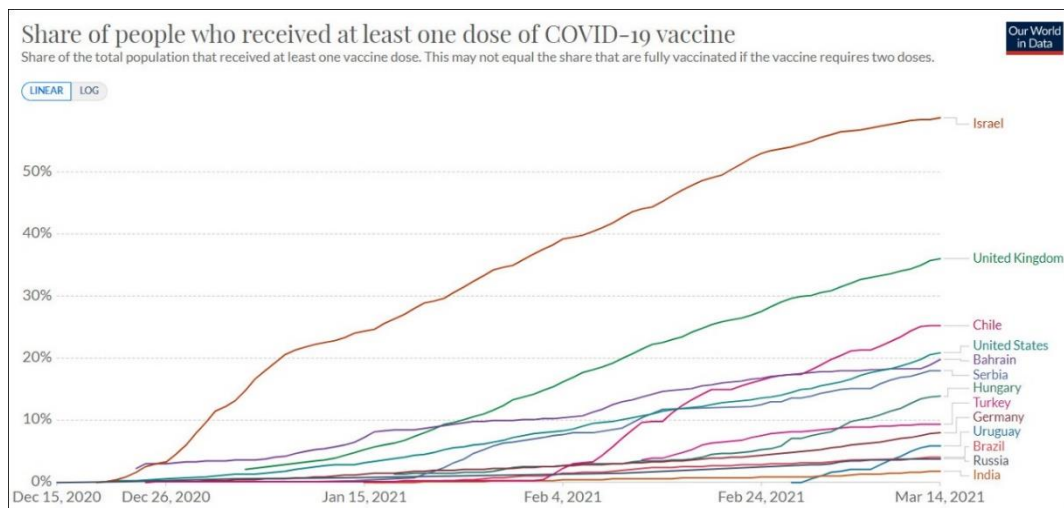
In view of the fact that at the time of writing the vaccination of children under the age of 16 has not yet been approved, gaining control of the pandemic through vaccination requires a very high compliance by the adult population. As of 14 March 2021, 5,128,212 people have received the first dose and 4,128,807 have received the two doses,³ the highest vaccination rate in the world (calculated according to the number of doses per 100 people).⁴

¹ [Mental Health Effects of School Closures During COVID-19](#), Joyce Lee, *The Lancet: Child & Adolescence Health*, 1 June 2020

² [Israel To Receive Last Shipments of Pfizer COVID Vaccines in Next Two Weeks](#), Ido Efrati, *Haaretz.com*, 21 February 2021

³ [The Coronavirus in Israel: General Situation](#), Ministry of Health (Hebrew)

⁴ [Coronavirus \(COVID-19\) Vaccinations: Statistics and Research](#), *ourworldindata.org*



Coronavirus Vaccination, Our World in Data, 14 March 2021

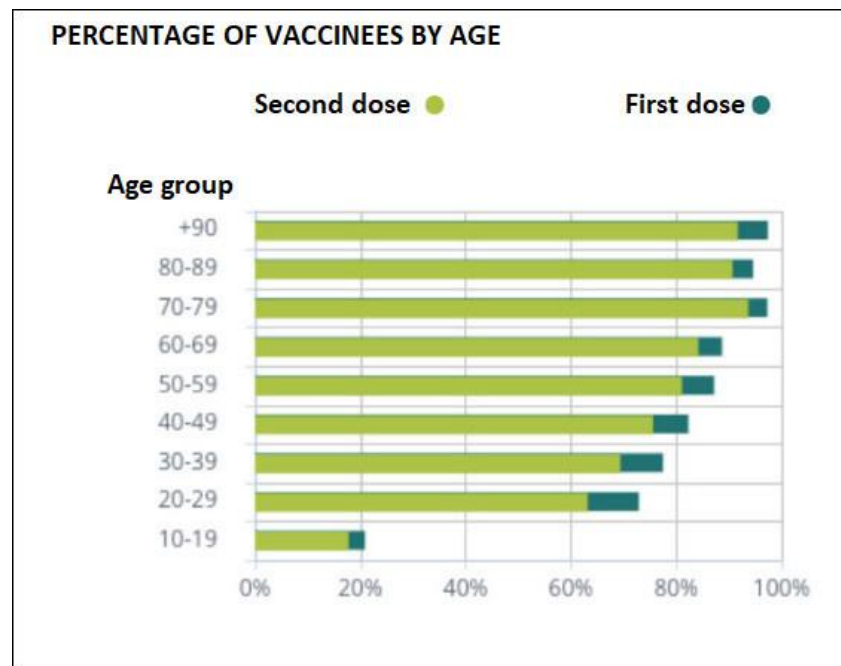
Upon the beginning of the vaccination roll out on 16 December 2020, the Health Ministry set the key guidelines for its prioritization: health and epidemiological urgency, safety, simplicity, latitude, flexibility, and a smooth roll out in order to ensure the safety, efficacy, and effectiveness of the vaccines. First priority was given to medical staff, tenants in old-age homes and long-term care facilities along with their caregivers, and people aged 60 and above. Second priority was given to at-risk groups (people suffering from diabetes, morbid obesity, chronic obstructive pulmonary disease (COPD), and high-exposure groups (school and kindergarten teachers, prisoners, wardens, and first responders).

As the campaign progressed, in early February 2021 it was decided to extend the vaccination campaign to the entire population aged 16 and above.

VACCINE HESITANCY

"Vaccine hesitancy" is in fact a sequence of attitudes, ranging from active demand for vaccines, through understandable fear about a new disease and a new vaccine, and categorical opposition to vaccines in general by an extreme minority.⁵

The vaccination campaign in Israel was initially characterized by a demand for vaccines that exceeded the HMOs' daily supply. As of 31 March 2021, a considerable part of the at-risk population had been vaccinated. However, vaccine compliance among this group and the general population has not been full (according to Health Ministry data, 90.6% of those aged 80-89, 93.6% of those aged 70-79, and 84% of those aged 60-69 had been vaccinated).⁶



The Coronavirus in Israel: General Situation, Ministry of Health, 31 March 2021

⁵ [Vaccine Hesitancy: Definition, Scope, and Determination](#), Noni E. MacDonald, *sciencedirect.com*, 14 August 2015

⁶ [Ibid](#)

A study examining vaccine compliance found that hesitancy stems from fear of bodily damage, mainly due to the speedy development of the vaccine.⁷ It should be noted that the rapid development of FDA-approved vaccines was made possible thanks to the enormous resources allocated to this purpose, which enabled a quick analysis of the results of clinical trials without waiting for fundraising. Moreover, due to the high prevalence of the disease, testers had ample access to the virus and data were quickly collected from a large number of infected people, all the while upholding strict quality controls.

Other possible reasons for hesitancy are inconsistent guidelines for vaccinating women of childbearing age, reluctance about an invasive procedure that impairs bodily integrity, nonchalance about the virus, disinformation on social networks,⁸ and doubt about the effectiveness of the vaccine against new variants of the virus. The relatively low vaccine compliance among the Arab public has been explained by lack of trust in the system and the establishment as a whole, problems with geographical accessibility, and the lack of linguistically and culturally adapted advocacy efforts.⁹

⁷ [Vaccine Hesitancy: The Next Challenge in the Fight Against COVID-19](#), Amiel A. Dror, Netanel Eisenbach, et al, *European Journal of Epidemiology*, 12 August 2020

⁸ [Most Israelis Afraid To Be First To Receive COVID-19 Vaccine, Poll Finds](#), Ido Efrati, *haaretz.com*, 18 November 2020

⁹ [Corona Vaccine: Only 5% Vaccinated in Arab Localities](#), Yaniv Sharon, *davar1.co.il*, 5 January 2021 (Hebrew)

KEY PRINCIPLES FOR DEALING WITH VACCINE HESITANCY

Commitment to the Common Good

A high vaccine compliance is a common good that will enable gaining control of the pandemic and reopening the economy (although unless children are vaccinated, Israel will not be able to attain "community immunity," which among other things hinges on attaining global immunity).

Mortality from corona is higher than from seasonal flu,¹⁰ and infection can cause persistent illness, including in young people who were previously healthy (long-term COVID),¹¹ while FDA-approved vaccines were found to be safe and effective in preventing morbidity.¹²

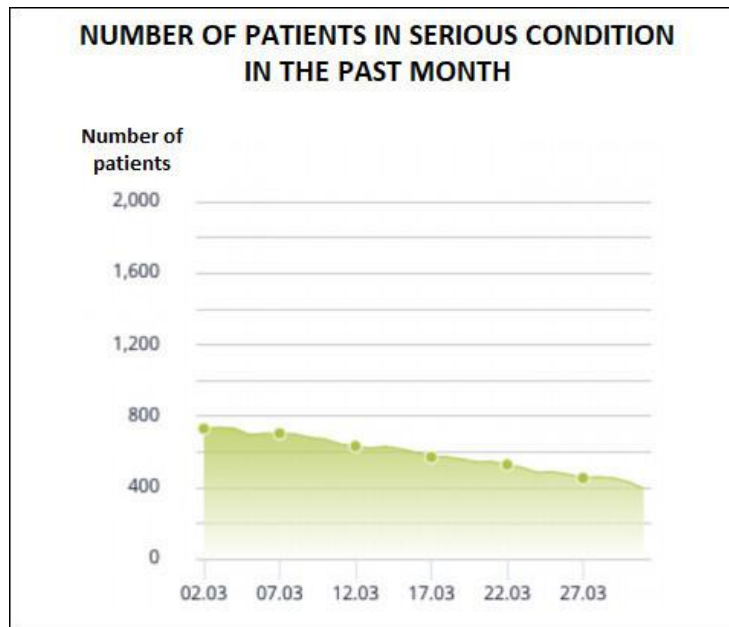
According to data collected by the Health Ministry, the number of patients in serious condition and the number of deaths has been steadily declining since the end of January 2021, in parallel with the increase in the number of two-dose vaccinees.¹³

¹⁰ [Estimates of the Severity of Coronavirus Disease 2019: A Model-Based Analysis](#), Robert Verity, Lucy C. Okell, et al, *The Lancet: Infectious Diseases*, 30 March 2020

¹¹ [Long COVID: Let Patients Help Define Long-Lasting COVID Symptoms](#), editorial, *nature.com*, 7 October 2020

¹² [Safety and Efficacy of the BNT162b2 mRNA COVID-19 Vaccine](#), Fernando P. Polack, Stephen J. Thomas, et al, *The New England Journal of Medicine*, 10 December 2020

¹³ [Ibid](#)



The Coronavirus in Israel: General Situation, Ministry of Health, 31 March 2021

A study conducted at Sheba Hospital among vaccinated and unvaccinated medical staff found a 30% decrease in infection after the first dose and a 75% decrease after the two doses.¹⁴ A decrease in infection after vaccination was also found in other studies.^{15 16 17}

Protecting vaccinated individuals from the virus and reducing the potential for infection will reduce the burden on hospitals, may reduce the risk of morbidity for people with medical contraindications to the vaccine and for the few vaccinees who fail to develop immunity, as well as reduce the likelihood of the emergence of resistant variants of the virus. Furthermore,

¹⁴ [Early Rate Reductions of SARS-CoV-2 Infection and COVID-19 in BNT162b2 Vaccine Recipients](#), Sharon Amit, Gili Regev-Yochay, et al, *The Lancet*, 6 March 2021

¹⁵ [BNT162b2 mRNA COVID-19 Vaccine in a Nationwide Mass Vaccination Setting](#), Noa Dagan, Noam Barda, et al, *The New England Journal of Medicine*, 24 February 2021

¹⁶ [The Effectiveness of the First Dose of BNT162b2 Vaccine in Reducing SARS-CoV-2 Infection 13-24 Days After Immunization: Real-World Evidence](#), Gabriel Chodick, Lilac Tene, et al, *medrxiv.org*, 29 January 2021

¹⁷ "A growing body of evidence suggests that fully vaccinated people are less likely to have asymptomatic infection and potentially less likely to transmit SARS-CoV-2 to others," [Interim Public Health Recommendations for Fully Vaccinated People](#), Centers for Disease Control and Prevention, 8 March 2021

reducing morbidity will enable the reopening of education, culture, and commerce, which are essential for both public health and social-economic resilience.¹⁸

Vaccination compliance is part of the "social contract" between the individual and society, ties in with an individual's responsibility to act in solidarity, and constitutes a collective commitment to the common good.

Building Trust

A high compliance with the health authorities' recommendation to get vaccinated depends on the public's trust in the professionalism of decision-making, the health authorities' confidence in the public readiness to act responsibly, the mutual trust between human beings, and the commitment to work for a common goal.¹⁹

Any decision on an intervention aimed at promoting vaccine compliance should bear in mind the manner in which it will affect all aspects of trust. In the absence of mutual trust, vaccination policies are doomed to fail. Trust-building is based on the transparency of the processes, their comprehension, and accepting them as contributing to the general good and the good of the individual. In our policy paper *The Right to Vaccination: Dealing With the Violation of the Right to Vaccines*, we emphasized the importance of trust in decisions concerning prioritization. At this stage, when high compliance with vaccination is an interest shared by all, trust continues to be a major challenge requiring extreme adherence to transparency, advocacy, and understanding of the motives for hesitancy.

¹⁸ [Policies and Strategies To Promote Social Equity in Health](#), Dahlgren, Göran & Margaret Whitehead, *Institute for Futures Studies*, September 1991

¹⁹ [Trust in Medical Organizations Predicts Pandemic \(H1N1\) 2009 Vaccination Behavior and Perceived Efficacy of Protection Measures in the Swiss Public](#), Ingrid Gilles, Adrian Bangerter, et al, *European Journal of Epidemiology*, March 2011

Commitment to Social Justice

Realization of the right to health and social justice values requires equitable access to vaccines for the entire population, according to the principle of equal concern for all men and women that do not replicate the inequality existing in Israeli society.

At this point, ensuring equitable physical access to vaccines calls for outreaching personally to unvaccinated HMO members, in particular impoverished and at-risk populations (elderly, home-ridden persons). We support making financial aid to HMOs contingent upon the attainment of vaccination targets among people with such mobility limitations.²⁰

Equitable physical access should be coupled with professional health information that is linguistically and culturally-adapted to different communities. This requires an investment in advocacy campaigns in Arabic, Russian, and Amharic to counter the "fake news" in these languages on social media platforms and the recruitment of influencers from these communities.

Protecting the Rights of the Individual:

Vaccine as a Voluntary Action

The Patient's Rights Law of 1996 stipulates in Chapter D, section (13a) that "medical treatment will not be given to a patient unless the latter has given his informed consent." This provision applies to vaccines as well. The "informed consent" doctrine is based on the principle of autonomy, whereby the individual has the capacity and the right to conduct his life according to his values and preferences, free from external interventions. Where medical treatment is concerned, this doctrine has two aspects under the law: the obligation to disclose to a patient "medical information that he

²⁰ [Bonuses and Fines: What the State Is Planning To Speed Up the Vaccination Campaign](#), Ronny Linder, *themarket.com*, 14 January 2021 (Hebrew)

reasonably needs to be able to decide whether to consent to the proposed treatment," and the patient's right to make a decision "by voluntary choice and independently."

Under which circumstances it is legitimate to violate the rights of the individual in order to protect the general public from infectious diseases remains a controversial question. According to one approach in public health,²¹ the violation of an individual's rights (including the right to autonomy) is justified only in cases where the individual's actions cause harm to others. According to another approach,²² the government has the responsibility and authority to vaccinate the population in order to prevent the spread of infectious diseases, even at the cost of violating the individual's rights, not only in cases where the individual's behavior causes harm to others, but also when the interest of the community requires it. Recognition of the community's interest is consistent with the values of public health, which focuses on the health of all and sees the individual's health as the product of a functioning public system.

Legal Authority to Infringe on the Rights of the Individual During a Pandemic

According to Article 20 of the Public Health Ordinance of 1940, in the event of a pandemic, the Health Ministry's Director General may determine "any matters or issues necessary to prevent or alleviate the disease." This authority was exercised in Israel in 1949, when smallpox vaccination was declared compulsory due to an outbreak in the Jerusalem area, and in 1994 when measles vaccination was declared compulsory due to an outbreak among the Bedouin population in southern Israel.²³ In 2018, due to an outbreak of measles in the town of Harish, the regional physician of

²¹ The Harm Principle: *On Liberty and the Subjection of Women*, John Stuart Mill, London: Penguin Books Limited, 2006

²² [Mandatory Vaccination: Understanding the Common Good in the Midst of the Global Polio Eradication Campaign](#), Lawrence O. Gostin, *Israel Journal of Health Policy Research*, 3 January 2018

²³ [Therapeutic Jurisprudence and Public Health: A Broad Perspective on Dialogue](#), Nadav Davidovitch, Michal Alberstein, *Thomas Jefferson Law Review*, 31 May 2008

the Health Ministry's Haifa District ordered unvaccinated children barred from attending kindergarten.²⁴

Seeing that the coronavirus is a worldwide pandemic, violation of the rights of anti-vaxxers is therefore legal in accordance with the Public Health Ordinance. However, if it entails violation of a constitutional right (such as the rights to autonomy, freedom of movement, privacy, and occupation), it must conform to the "restrictive clause" set forth in Basic Law: Human Dignity and Liberty and Basic Law: Freedom of Occupation, headed by the requirement of proportionality.

Proportionality Requirement

The "restrictive clause" in Article 8 of Basic Law: Human Dignity and Liberty and in Article 4 of Basic Law: Freedom of Occupation allows for the violation of basic constitutional rights if four conditions are met: the violation is carried out according to a law, befitting the values of the State of Israel, is enacted for a proper purpose and to an extent no greater than is required (proportionality). . These conditions for determining the legitimacy of the infringement of an individual's rights have been upheld in court rulings.

According to Supreme Court rulings, the proportionality requirement consists of three sub-tests: the first is the "rational link", whereby the means should suit the end. The next sub-test is the least restrictive means And the third sub-test is the test of proportionality in the narrow sense, which examines the proper ratio between the benefit of achieving a worthy cause versus the extent of the constitutional violation."²⁵

²⁴ [14 Children Not Vaccinated for Measles Barred From Kindergarten in Harish](#), *Israel Association of Public Health Physicians'* website, 26 December 2018 (Hebrew)

²⁵ [Supreme Court Ruling 7245/10 Adalah vs. Ministry of Social Welfare](#), *adalah.org*, 2 July 2012 (Hebrew)

VACCINE POLICY IN ISRAEL: CRITICAL REVIEW

Israel's vaccine policy is largely a source of pride. The prioritization of vaccines when they began to arrive in Israel was determined according to professional criteria for reducing morbidity and mortality, vaccines were made available to migrants and foreign workers, and efforts were made to provide information and to tackle "fake news" on social media. However, we would like to point to decisions that deviate from the key principles for dealing with the aforementioned vaccine hesitancy.

SELECTIVE ROLLOUT

Introduction

As stated, social justice in access to vaccines requires an equitable rollout to the entire population. Overall, Israel's vaccination policy conforms to the principles of social justice, as evidenced by the recognition that everybody has the right to a vaccine: home-ridden seniors, refugees, asylum seekers, and foreign workers. However, decisions made regarding the vaccination of prisoners and of the Palestinian population deviated from equitable access to the vaccines, and the relatively low compliance with vaccination among underprivileged groups shows that the efforts made for equitable rollout were not sufficient.

Vaccination of Prisoners

The Public Security Minister's decision not to prioritize the vaccination of prisoners aged 60 and above or at-risk groups was made without authority and contrary to the professional recommendations of the Prioritization Committee. As noted, this decision contravenes the principles of social justice and undermines the public's trust that decisions concerning vaccines are made for purely professional reasons.

The legal right of prisoners to medical treatment, including vaccination, has been upheld by the Supreme Court: "Preventing vaccination is not a punitive measure.... Everybody is equally entitled to the corona vaccine [based on the Health Ministry's professional prioritization]" (Judge Solberg); "A prisoner, like any other human being, is entitled to and should not be discriminated against in receiving medical care, including a necessary vaccine. Moreover, since the prisoner is in the custody of the state, unlike a free person, the state has a special obligation to provide him the medical care he needs. These basic principles are enshrined in the provisions of the law, as well as in rulings of this court over the years" (Justice Mazuz).²⁶

In addition to the legal duty, there is an ethical obligation to vaccinate prisoners based on the same priority rules that apply to the entire population. The crowded conditions in prisons and the technical inability to isolate inmates suspected as sick increase the risk of morbidity and mortality and require prioritizing the vaccination of the incarcerated population, all the more so inmates over the age of 60 and with underlying medical conditions. Addressing these aspects, the Supreme Court ruled that "this actually is a matter of life and death. If anything, incarceration, which in the best of cases is characterized by crowdedness and forced stay in a closed place, makes the vaccination of inmates even more imperative" (Judge Barak-Erez).²⁷

In a decision dated 31 January 2021, the Supreme Court ruled that the Public Security Minister's decision was made without legal authority and that such authority lies with the Health Ministry, and explicitly stated that every prisoner has a basic human right to protect his life.²⁸

Vaccination of the Palestinian Population

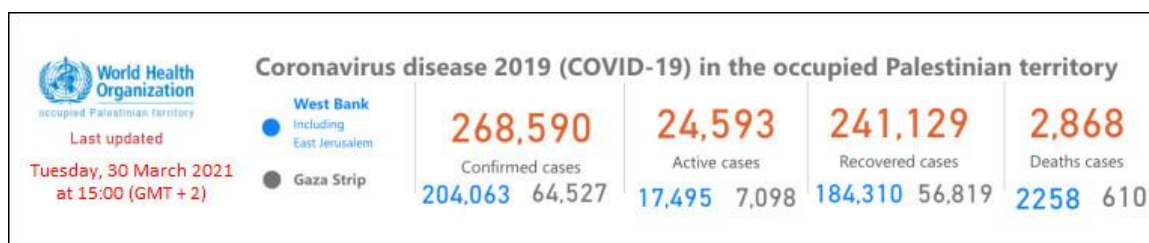
The principle of equitable access to vaccines was also violated by policymakers through their decision to refrain from transferring to the Palestinian Authority (PA)

²⁶ [Supreme Court Ruling 158-21 Physicians for Human Rights vs. Public Security Minister](#), 19 January 2021 (Hebrew)

²⁷ [Ibid](#)

²⁸ [Ibid](#)

sufficient vaccines to vaccinate all residents of the West Bank and Gaza Strip. Vaccines were supplied to the PA sparingly, and only after all citizens of the State of Israel were given the opportunity to be vaccinated. There is high corona morbidity and mortality in the PA: as of 30 March 2021, according to WHO data, there had been 204,063 confirmed cases in the West Bank and 2,258 had died. Contrary to the decline in morbidity in Israel as a result of the vaccination campaign, morbidity in the PA is on the rise.



Coronavirus disease 2019 in the occupied Palestinian territory, World Health Organization, 30 March 2021

The Palestinian health system is disorganized, lacks resources, and depends on international aid and Israel's humanitarian gestures and donations to function. PA residents cannot exercise their right to vaccination without outside assistance. As part of the COVAX initiative (launched by the WHO in collaboration with other organizations), the Palestinians may receive vaccines that will be sufficient for 20% of the population, which is definitely not enough. This is why the State of Israel, which is responsible for the problems of the Palestinian health system, should ensure that the residents of the PA are vaccinated in keeping with the rules of equality and social justice and the laws of occupation.





















As stated in our policy paper *The Right to Vaccination: Dealing with the Violation of the Right to Vaccines*, health and vaccines should be a public good that is given to all, regardless of origin or place of residence. In addition to the moral perspective, helping the Palestinians to exercise their right to a vaccine is essential for gaining control of the pandemic in Israel. The coronavirus does not ask for an ID card before infection and does not stop at a checkpoint. Residents of the PA come to work in Israel

and Israeli citizens go shopping in the PA. Neighborly relations result in physical contact and continued contagion, and it can therefore be said that the citizens of Israel and the residents of the PA share a common epidemiological fate.

Vaccination of Underprivileged Populations

According to Health Ministry data, the vaccination compliance rate in Arab localities has been lower than in Jewish localities, and the compliance rate in lower socioeconomic Jewish localities has been lower than in high socioeconomic locales.²⁹ The reasons for this include the belated opening of vaccination stations for the Arab population and low digital literacy.

²⁹ [The Coronavirus in Israel: General Situation](#), *Ministry of Health* (Hebrew)

Locality	Percentage first dose	Percentage second dose
Hashmonaim	89.11% 	81.59% 
Kokhav Yair	83.11% 	80.62% 
Omer	82.35% 	78.81% 
Savyon	80.47% 	76.64% 
Nof Ayalon	78.52% 	74.14% 
Locality	Percentage first dose	Percentage second dose
Hawashlah (tribe)	5.28% 	3.45% 
Masudin al-Azazmah	4.48% 	3% 
Abu-Qurinat (tribe)	3.33% 	2.46% 
Qudayrat al-Sana (tribe)	2.91% 	1.62% 
Abu-Rubiyah (tribe)	2.33% 	1.54% 

The Coronavirus in Israel: General Situation, Ministry of Health, 31 March 2021

These findings call for efforts to make the vaccine accessible to underprivileged populations, particularly the poor and other at-risk groups (elderly, home-ridden persons). Facilitating physical access to the vaccine may necessitate personal persuasion and outreach to unvaccinated HMO members. In addition, financial aid to HMOs should be made contingent on the achievement of vaccination targets among at-risk groups and people with mobility problems. People should be allowed to come

to a vaccination center without first securing an appointment online, and the use should be mulled of immunization trailers as was done during the polio vaccination campaign in 2013.

Equitable physical access should be coupled with health information that is linguistically and culturally-adapted to different communities. This requires an investment in advocacy campaigns in Arabic, Russian, and Amharic to counter the "fake news" in these languages on social media platforms and the recruitment of influencers from their midst to the advocacy campaign, alongside an information drive by doctors and nursing staff in the community who are familiar with the population.

Disclosure of 'vaccination status'

Introduction

A record that a person has been vaccinated is medical information, similar to information that a mammogram, gastroscopy, or any other medical procedure has been performed. Such medical information is in the hands the health authorities, and its disclosure constitutes "violation of the duty of confidentiality established by law regarding a person's private affairs", or "invasion of privacy" as defined in Article 7 (2) of the Privacy Protection Law of 1981.

Article 19 (a) of the Patient Rights Law of 1996 refers specifically to the confidentiality of medical information, and states that "a caregiver or employee of a medical institution shall keep confidential all information concerning a patient admitted during the performance of their duties or work." Moreover, disclosure of medical information contravenes an explicit provision in Basic Law: Human Dignity and Liberty, whereby "every person is entitled to privacy and discretion."

According to the aforementioned, violation of the right to privacy is legitimate only if it meets the requirements of proportionality. We would like to point out to a deviation

from the principle of proportionality with regard to disclosing an individual's vaccination status to elements outside the health system. We would like to emphasize that the disclosure of medical information constitutes not only a legal but also an ethical and professional failure, and could potentially undermine mutual trust in the commitment to the common goal of gaining control of morbidity.

Disclosing 'Vaccination Status' of HMO Members to Parties Outside Health System

Israel's vaccination campaign has been spearheaded by the HMOs, which are highly trusted by the public and praised by countries around the world. The 2021 Public Health Ordinance Amendment No. 36 (Temporary Provision-New Corona Virus), which aims "to allow the disclosure of information about vaccinees to diverse public bodies in order to assist with the promotion of the national vaccination campaign,"³⁰ transfers the authority and responsibility for advancing vaccine compliance, at least partially, from the HMOs and health authorities to non-medical entities.

The medical data kept by the HMOs is a major resource for promoting the vaccination campaign, partly because it is used by them to prioritize vaccination according to age and underlying medical conditions. Now that approval has been given to vaccinate all people over the age of 16, the HMOs are able to encourage unvaccinated members (by providing information and even personal assistance on access to vaccines). However, the information at their disposal, including on whether members have been vaccinated or not, is private information and should remain confidential.

The violation of the privacy of HMO members as a result of the disclosure of information on vaccinees, which is now allowed by law following the aforementioned amendment, is disproportionate. The law was approved by the Knesset before the effectiveness of less offensive alternatives to promote vaccine compliance were examined, such as local initiatives aimed at a specific population (dishing out cholent

³⁰ [Draft Bill on Amendment to Public Health Ordinance \(Temporary Provision-New Corona Virus\): Disclosure of Information on Vaccinees](#), *knesset.gov.il*, 22 February 2021 (Hebrew)

to ultra-Orthodox getting vaccinated in Bnei Brak) or employers' initiatives (advocacy to employees and making vaccines accessible at the workplace). Vaccine compliance in Israel has been very high and the number of vaccinees has been rising by the day, even if the pace has slowed down. Constantly adding measures to promote compliance without examining their effectiveness or whether the measures taken so far are sufficient, provokes public antagonism and is not helpful.

We would like to emphasize that we see legislation that allows the disclosure of identifying medical information to employers (the Education Ministry, in this case) as particularly problematic. Such legislation may expand in the future to a demand for additional medical information deemed relevant by the workplace.

A basic premise of the doctor-patient relationship is the confidentiality of the medical information, whose violation without the express consent of the patient undermines the principles of medical ethics. The principle whereby identifying medical information is not disclosed without the consent of the individual should not be waived even during a pandemic. Violation of medical confidentiality undermines public trust in the health authorities' commitment to ethical values and does not promote a sense of solidarity and collective commitment to the common good. Erosion of trust may in the future harm public cooperation with national health initiatives, such as the creation of a genetic database.

To the extent that the local authorities, the Social Welfare Ministry, or the Education Ministry possess information that may help promote vaccine compliance, the proper procedure to follow is for the information to be passed on to the HMOs managing the vaccination campaign. The reverse process of allowing the transfer of medical information to non-medical entities entails the danger that in addition to violating privacy and trust, those entities might act in ways that do not meet professional and ethical criteria underlying public health discipline, such as accusations, shaming, or threats.

There is research evidence that medical staff most influences the decision to get vaccinated.³¹ Encouraging vaccination and promoting health requires professionalism, knowledge, and the ability to provide answers to medical questions and questions about safety and efficacy. Unlike HMO professionals, Education Ministry, Social Welfare Ministry, and local government officials do not possess the necessary knowledge to do so and may even cause harm.

It should be noted that on 9 March 2021, the Supreme Court issued an injunction instructing the Knesset, government ministries, and the HMOs to show cause why the aforementioned law amendment should not be revoked due to its violation of the constitutional right to privacy stipulated in the restrictive clause of Basic Law: Human Dignity and Liberty.³² At the time of writing, a final ruling has not yet been given.

"Green Pass" Requirement (in Businesses and Public Places)

Following a long period during which businesses and public places were ordered closed, regulations enacted in 2020 under Special Ordinance for Dealing with the New Corona Virus allowed the opening of some businesses and public places to people presenting a "green pass." According to these regulations, a "green pass" is a certificate issued by the Health Ministry indicating that a person has recovered from corona, has been vaccinated, or is a participant in an Israeli clinical trial for a coronavirus vaccine.

The businesses and public places whose opening has been approved for "green pass" holders include gyms, places where cultural activities take place in the presence of an audience, places where sporting events take place in the presence of an audience, exhibition sites, hotels, swimming pools, conference halls, banquet halls or gardens, restaurants, and tourist attractions. The operator of a public place or business where entry is allowed only upon

³¹ [The Role of Public Trust During Pandemics: Implications for Crisis Communication](#), Michael Siegrist, Alexandra Zingg, *European Psychologist*, 2014

³² [Supreme Court Ruling 1441/21 Association for Civil Rights in Israel and Physicians for Human Rights vs. Knesset](#), 9 March 2021 (Hebrew)

presentation of a "green pass" may place a stand at the entrance to run rapid corona tests (which do not need to be sent to the lab) that will allow the person to enter that place only.

Making entry to businesses or public places contingent upon the presentation of a "green pass" indicating that a person has either been vaccinated or is a recoveree, or alternatively subjecting them to a rapid corona test, creates tension between the rights of the individual and the public interest.

Such stipulations may be in conflict with the following key principles for promoting vaccine compliance presented earlier in this paper.

Collective commitment to the common good: Opening part of the economy to people presenting a "green pass" actually gives "privileges" to vaccinees and recoverees, and may lead to negative labeling of those who refrain from vaccination or testing. Negative labeling eventually leads to exclusion and alienation, and hurts the sense of belonging and solidarity of rejectees. A strategy aimed at promoting vaccine compliance should focus on a collective commitment to the common good, not on the individual who chooses or declines to be vaccinated.

Building trust: Opening part of the economy only to vaccinees and recoverees is based on the assumption that the vaccine prevents infection. Studies to date have found that the vaccine reduces infection, but does not completely prevent it, and therefore it is not known how gatherings of vaccinees will affect morbidity. Another issue for which no research is available is the vaccine duration of protection against disease. The decision that the "green pass" will be valid for six months starting a week after the second dose is an arbitrary one, not to mention the decision to grant a "green pass" to recoverees for half a year, as it is not known how long they are protected from recurrent illness either. Furthermore, coercive legislation does not promote trust in vaccines, and decisions that do not rely on a confirmed epidemiological basis undermine public confidence in the health authorities' commitment to professional decisions.

Social justice: Requiring a "green pass" as a condition for participation in social activity may deepen social disparities. High socioeconomic groups have higher access to

vaccines and higher digital literacy, which gives them an advantage over low socioeconomic groups in obtaining a "green pass." The alternative of rapid corona tests also deepens gaps, insofar as the subjects are required to bear the cost.

Proportionality of the violation of the individual's rights: A digital application that attests to vaccination, recovery from corona, or rapid test results discloses medical information to non-medical parties and therefore violates privacy. The information, even if it is presented voluntarily to business owners, may leak to other parties such as employers or insurance companies. According to the regulations allowing businesses and public places to open upon presentation of a "green pass," these will only be in effect from 23 March 2021 until 1 April 2021. However, the legislation may be used to retain the requirement even after the end of the pandemic and to expand it to other diseases, without having held an exhaustive discussion or mulling alternatives for promoting vaccine compliance in normal times. Legislation that allows rights to be contingent on vaccination may even be expanded in the future to include additional health data.

On the other hand, and notwithstanding the above, we agree that the "green pass" will allow reopen the economy amid a calculated risk of harm to the efforts to gain control of the pandemic and that it has economic benefits.

Nevertheless, we would like to emphasize that the "green pass" initiative should be restricted to businesses and public places of nonessential consumption, and beware of expanding it to places where entry is essential for the exercise of individual rights, such as hospitals, clinics, and pharmacies that fulfill the right to health, houses of worship that fulfill the right to freedom of worship, or entry to workplaces, as will be discussed below.

We would like to point out that rapid tests as an alternative to a "green pass" reduces the violation of the individual's rights to autonomy and freedom of movement, and the inconvenience involved may even promote vaccine compliance. Having said that, however, tests for persons with contraindications (such as children) should be funded by the state.

As for who should be responsible for enforcing the "green pass" requirement, we believe that explaining the rationale behind it to business owners and consumers and gaining the public's cooperation based on understanding is preferable to enforcement by the police.

Entry To Workplaces Contingent on Vaccination

Unlike the requirement to present a "green pass" to enter businesses and public places for nonessential consumption, a requirement to present a certificate of vaccination or corona recovery to enter the workplace, which is currently on the table, is a means for reopening the economy that should be used carefully due to the violation of the freedom of occupation.³³

Prior to such stipulation, priority should be given to steps taken by the workplace to make the vaccine accessible to employees, such as allowing people to be vaccinated during working hours, symbolic benefits to vaccinees, or arranging for an immunization trailer to come to the workplace. The choice of such steps by employers promotes a safe work environment and is a value statement that contributes to society as a whole.

Making entry to workplaces contingent on presentation of a "green pass" will be a proportionate measure only if the following conditions are met: To the extent possible, employees will be offered remote work alternatives (an isolated spot in the workplace or computerized visual communication), PCR tests every 48 hours or rapid antigen tests, or compliance with the requirement only in cases that require work with at-risk populations (children, sick people, and elderly persons who may be less immune to the virus).

The decision of the Health Ministry's Director General of 28 February 2021, whereby a student or health system worker who refuses to be vaccinated will receive information about the medical consequences of their refusal to themselves and to their patients and told that if they persist in their refusal, they will not be able to work with immunosuppressed patients, is a proportional one in our opinion.

³³ [Basic Law: Freedom of Occupation](#): "Every Israel national or resident has the right to engage in any occupation, profession, or trade," *knesset.gov.il*, 9 March 1994

As for making the entry of teaching staff into schools contingent on a "green pass," we would like to point to the Regional Labor Court's ruling of 21 March 2021³⁴ that affirmed a local authority's decision to ban entry to the workplace of a teacher assistant in a special education school who refused to get vaccinated or to present a negative corona test. Although in our opinion this is a proportionate outcome, both because it entails work with an at-risk population (children, who are not vaccinated at this stage) and because the option exists of undergoing a corona test as an alternative, a decision that violates the freedom of occupation should be adopted through primary legislation and not by local authority heads.

We would also like to note that we support employers' right to know whether an employee has been vaccinated or not, as long as the information is provided voluntarily and the employee refusing to disclose such information is not "punished" but offered employment alternatives. We would like to emphasize that a distinction should be made between such a voluntary and legitimate disclosure and the disclosure of medical information by the HMOs without the consent of its members, which is not illegitimate.

³⁴ [Tel Aviv Regional Labor Court Ruling 42405-02-21 Sigal Avishay vs. Kokhav Yair-Zur Yigal Local Council](#), 7 March 2021 (Hebrew)

POLICY RECOMMENDATIONS

Commitment to the Common Good

- In light of initial findings that the vaccine reduces infection and not only prevents morbidity, vaccination should be presented as an act of social solidarity; in other words, as an act that reduces morbidity and mortality rates and allows the economy to open up and return to normal.

Building Trust

- Decision-making should be strictly transparent. In this context, the minutes of the meetings of the Corona Cabinet should be publicized.
- Decision-making should be based on professional criteria and the rationale behind each decision should be explained to the public.

Commitment to Social Justice: Equitable Access to Vaccines

- Personal outreach to unvaccinated HMO members should be promoted, particularly at-risk persons, giving priority to residents of local authorities ranked at the lowest socioeconomic level.
- The use of immunization trailers should be considered, especially in places with physical accessibility problems.
- People should be allowed to come to the vaccination centers without having to make an appointment online.
- Steps should be taken to correct fake news on social media platforms in Arabic, Russian, and Amharic.

- Primary care physicians and nursing staff should be instructed to provide patients with information about the vaccine and to encourage vaccination.
- HMOs should be compensated for any wages paid to medical staff working overtime to promote vaccine compliance.
- Legislation should be promoted that regulates vaccination policy in Israel and stipulates the allocation of resources and manpower for advocacy campaigns, computerization, and the rollout of vaccines to underprivileged populations, including in peripheral areas.

Protection of Individual Rights

- The medical record showing that a person has chosen to be vaccinated or not is confidential information, which should not be passed on to others without consent. Legislation that infringes on medical confidentiality, before other possibilities have been exhausted to promote compliance with vaccines, is disproportionate.
- The authority and responsibility to persuade the public to get vaccinated lies with the health authorities. To the extent that other bodies possess information that may help promote vaccine compliance, these bodies should pass the information on to the health authorities.
- Beware of expanding use of the legislation making entry to public places contingent on disclosure of immunization status once the pandemic is over.
- Beware of expanding use of the legislation making entry to public places contingent on disclosure of immunization status to additional medical information requirements.
- Beware of expanding use of the legislation making entry to public places contingent on disclosure of immunization status to include demands to disclose it in places where entry is essential for the exercise of individual rights, such as hospitals, clinics, and pharmacies that fulfill the right to health and houses of worship that fulfill the right to freedom of worship.

- Unvaccinated employees should be offered the option of undergoing PCR tests every 48 hours or rapid antigen tests.
- PCR or rapid antigen tests of people with contraindications (including children) should be financed by the state.
- Enforcement of the requirement to present proof of vaccination or recovery to allow entry to businesses and public places is best served through advocacy among business owners and consumers that explains the rationale of the requirement and promotes cooperation.
- Employers should be encouraged to take steps to vaccinate their employees, such as providing symbolic benefits to vaccinees and allowing vaccination during working hours.
- Entry to the workplace should be made contingent on vaccination, a recovery certificate, or a negative corona test only in cases involving work with at-risk populations (children, sick people, and elderly persons who may be less immune to the virus).
- Employees who choose to avoid vaccination should be offered remote work alternatives (an isolated spot in the workplace or computerized visual communication), or to the extent possible, work that does not involve contact with at-risk populations.
- Requiring a "green pass" from teachers to enter schools, to the extent that it is necessary, should be approved through primary legislation or at least by the government, and not by local authority heads.

SUMMARY

The number of people vaccinated against the coronavirus in Israel is the highest in the world (calculated by the number of vaccine doses per 100 people). However, intervention is required to promote compliance of those hesitating to get the vaccine. There are a number of key principles for dealing with "vaccine hesitancy," headed by informing and persuading the public that high vaccine coverage is the common good. Vaccine compliance does not only protect the individual from morbidity and mortality, but is an act of social solidarity. Other principles are transparency and professionalism in decision-making conducive to building trust, equitable access to vaccines in accordance with the principle of social justice, and protecting the individual from a disproportionate violation of his rights.

Israel's corona vaccination policy is largely a source of pride. The prioritization process when the vaccines began arriving was based on professional criteria aimed at reducing morbidity and mortality, vaccines were rolled out to migrants and foreign workers, and a PR campaign was launched to deal with "fake news" on social media. However, some of the decisions to promote vaccine compliance do not conform to the principles for dealing with vaccine hesitancy presented above.

Today, advocacy and accessibility actions should be favored to deal with "vaccine hesitancy." The requirement to display a "green pass" at the entrance to businesses and public places creates tension between the rights of the individual and the public interest and is problematic as a means of promoting vaccine compliance, though required in light of the benefits for advancing the reopening of the economy. However, care should be taken not to extend this requirement to places where entry is essential for the exercise of individual rights.

One must not forget that "vaccine hesitancy" will continue after the pandemic, both with regard to the coronavirus and to other infectious diseases. In order to deal with the phenomenon in a manner consistent with the aforementioned key principles, legislation should be advanced that regulates Israel's overall vaccination policies and allocates resources and manpower for advocacy campaigns, computer infrastructure, and accessibility of vaccines to underprivileged populations.



In May 2020, we launched Zulat for Equality and Human Rights, a unique institute that combines research and analysis via social media networks and conventional media, and acts as a bridge between the political arena and civil society. Zulat's studies portray the political and public reality, but our work only begins there. As an activist think tank, we fight back by working to set an alternative agenda, change the public discourse, and advance policy and legislation to uphold democracy and human rights. We represent a broad perspective on human rights, that looks at universal rights, civil rights - private as well as collective, and social rights – as a whole. We believe all different types of rights depend and relay on one another.

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