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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Human rights implications of the lack of affordable, timely, equitable and universal access and distribution of coronavirus disease (COVID-19) vaccines and the deepening inequalities between States

Report of the United Nations High Commissioner for Human Rights*

Summary

The present report, prepared pursuant to Human Rights Council resolution 46/14, contains an examination of the human rights implications of the lack of affordable, timely, equitable and universal access and distribution of coronavirus disease (COVID-19) vaccines and the deepening inequalities between States, highlighting that vaccine delays not only have grave health consequences, but also have other profound human rights implications. Lack of access to vaccines is also a driving force behind the sharply divergent economic recoveries from the earlier waves of the pandemic, reversing hard won progress on realizing the Sustainable Development Goals and pushing developing countries further behind.

The United Nations High Commissioner for Human Rights calls for urgent action by all relevant actors to eliminate existing obstacles to ensuring that COVID-19 vaccines reach everyone. The COVID-19 pandemic has highlighted the value of integrating human rights-based approaches into efforts aimed at health emergency preparedness, response and recovery. Any recovery must address the root causes of inequality, political and economic instability and displacement. Building back better from the pandemic will require the implementation of the full spectrum of human rights, as affirmed by the Secretary-General in "Our common agenda". As he affirmed in "The highest aspiration: a call to action for human rights", it is also crucial to ensure that human rights principles inform the implementation of the 2030 Agenda for Sustainable Development.

* Agreement was reached to publish the present report after the standard publication date owing to circumstances beyond the submitters' control.

I. Introduction

1. In its resolution 46/14, the Human Rights Council requested the United Nations High Commissioner for Human Rights to submit a report, at the forty-ninth session of the Council, on the human rights implications of the lack of affordable, timely, equitable and universal access and distribution of coronavirus disease (COVID-19) vaccines and the deepening inequalities between States, including the related vulnerabilities and challenges and the impact on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The High Commissioner provided an oral report to the Council at its forty-eighth session.

2. The Council requested the High Commissioner to prepare the report, in consultation with States, United Nations agencies, funds and programmes, in particular the World Health Organization, the special procedures of the Human Rights Council, the treaty bodies, civil society organizations and other stakeholders. The Office of the United Nations High Commissioner for Human Rights (OHCHR) received 11 written contributions in response to a request for input, which are available on the OHCHR website.[1]

II. Vaccine inequity and human rights

A. Overview

3. The rollout of COVID-19 vaccines a year after the virus responsible for COVID-19 first emerged was an important scientific achievement. The nature of the rollout, however, revealed stark inequities. As at the time of writing of the present report, just over 10 per cent of adults in low-income countries have been vaccinated with at least one dose, compared with 67 per cent in high-income countries.[2] A number of countries that have vaccinated the majority of their populations are now administering booster shots, and some are introducing vaccine mandates and stockpiling vaccines, while a large majority of people in developing countries continue to lack sufficient access to full vaccination against COVID-19.

4. Given that 11.2 billion doses of vaccines were produced by the end of 2021,[3] it is expected that production efforts will more than double to 24 billion doses by June 2022.[4] That would be quantitatively sufficient to fully vaccinate the entire world population, but most of the doses in the production queue are already allocated to high-income countries.[5] Even some vaccines produced in Africa, where only 10 per cent of population have been vaccinated,[6] have been shipped to countries that have already vaccinated the majority of their populations.[7] In all countries, serious cases of COVID-19 and deaths are predominantly occurring among those who are unvaccinated.[8]

[1] The submissions received are available from https://www.ohchr.org/EN/Issues/ESCR/Pages/COVID-19-vaccines.aspx.

[2] See https://data.undp.org/vaccine-equity/ (data as at 13 January 2022).

[3] The 11 billion COVID-19 vaccines produced in 2021 has resulted in the largest immunization campaign in human history, and more and better vaccine redistribution and innovation will be required in 2022, according to the International Federation of Pharmaceutical Manufacturers Associations.

[4] Given that COVID-19 vaccine output is estimated to reach over 12 billion units by the end of 2021 and 24 billion units by mid-2022, innovative vaccine manufacturers renew commitment to support the efforts of the Group of 20 to address remaining barriers to equitable access, according to the International Federation of Pharmaceutical Manufacturers Associations; see also https://www.imf.org/external/NP/Res/GHP/dashboardv2.html.

[5] See https://news.un.org/en/story/2021/09/1100192.

[6] See https://africacdc.org/covid-19-vaccination/.

[7] See https://www.nytimes.com/2021/08/16/business/johnson-johnson-vaccine-africa-exported-europe.html.

[8] See, for example, https://www.who.int/news-room/questions-and-answers/item/coronavirus-disease-(covid-19)-vaccines; https://www.cdc.gov/mmwr/volumes/70/wr/mm7037e1.htm; and https://ourworldindata.org/covid-deaths-by-vaccination.

5. Reducing the circulation of the virus still requires a combination of effective measures, including wearing protective face masks, physical distancing and testing, yet vaccines remain a particularly strong determinant to controlling the impact of the pandemic by limiting the risk of severe symptoms, hospitalization and death.[9] If large numbers of the global community remain unvaccinated, the effectiveness of vaccination as a public health strategy will continue to be compromised, with serious impacts on human rights, including the rights to life, to health, to work, to education, to social security, to equality and to non-discrimination. The right to health of all persons is indeed undermined when vaccines are not available to everyone, given that variants, including more dangerous ones, may continue to develop and affect public health, as evidenced by the recent emergence of the Omicron variant and its rapid spread.

6. There are many uncertainties around how the virus and the options for response to COVID-19, such as effective therapeutics or new vaccines, will evolve. Successive waves of infections, as a result of insufficient vaccination rates, may favour viral evolution and the emergence of new variants, such as Omicron, that may be more contagious or have the ability to evade immunity.[10] It should therefore be in the interest of all to ensure universal and equitable access to COVID-19 vaccines for all as quickly as possible.

B. Obligations of States

7. Access to a COVID-19 vaccine that is safe and effective is an essential element of the right of everyone to the highest attainable standard of physical and mental health.[11] The Committee on Economic, Social and Cultural Rights, interpreting that and the other rights set out in the International Covenant on Economic, Social and Cultural Rights, has made clear that States have an obligation to take all the necessary measures, as a matter of priority and to the maximum of their available resources, to guarantee access for all persons to vaccines against COVID-19, without any discrimination.[12]

8. Given that the virus knows no borders, investment in one country is inherently insufficient, if other countries lack the resources to effectively address COVID-19. The global nature of the pandemic makes it incumbent upon all States to fulfil their obligations to support, to the maximum of their available resources, efforts to make vaccines available globally.[13] States in a position to provide technical or financial assistance should cooperate internationally and provide support as needed to uphold the right to health, especially in the face of the pandemic. That includes the sharing of research, knowledge, medical equipment and supplies and taking coordinated action to reduce the negative economic and social impacts of the health crisis and to promote economic recovery globally.[14]

9. According to the Committee on Economic, Social and Cultural Rights, vaccine nationalism breaches the extraterritorial obligations of States to avoid taking decisions that limit the ability of other States to make vaccines available to their populations and therefore to implement their human rights obligations relating to the right to health, because it results in a shortage of vaccines for those who are most in need in the least developed countries.[15] The Committee emphasized that States should ensure that no decision or unilateral measure obstructed access to vaccines and that any restriction geared towards secure national supply must be proportionate and the urgent needs of other countries must be taken into consideration.[16] Furthermore, States must ensure that measures to close borders do not discriminate on the basis of nationality and that, where such a step is epidemiologically

[9] See https://www.who.int/news-room/questions-and-answers/item/coronavirus-disease-(covid-19)-vaccines.
[10] See https://www.who.int/en/activities/tracking-SARS-CoV-2-variants/.
[11] See E/C.12/2021/1.
[12] Ibid.
[13] Ibid., para. 4.
[14] See Ibid.
[15] Ibid., para. 4.
[16] See Ibid.

warranted, alternative measures are assessed in order to mitigate and avoid causing further social and economic harm to the countries concerned.

10. States also have a responsibility to take steps to eliminate obstacles to the effective production and distribution of vaccines. Currently, intellectual property rights present obstacles not only to sufficiently expanded vaccine production, but also to other critical elements of COVID-19 response, including testing and treatments. But those barriers are not immutable. On 2 October 2020, a large group of States, led by India and South Africa, submitted a proposal for a waiver under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), in relation to prevention, containment or treatment of COVID-19, that would continue until widespread vaccination is in place globally and the majority of the world's population has developed immunity.[17] With the emergence of the Omicron variant of COVID-19 and related travel restrictions, the twelfth Ministerial Conference of the World Trade Organization, at which further negotiations should have been held, has been postponed indefinitely.[18] In supporting that call, the World Health Organization has pointed out that flexibilities in trade regulations exist for emergencies; a global pandemic that has forced many societies to shut down and has caused much harm to businesses of all sizes surely qualifies.[19]

11. While the realization of the right to health is to be achieved progressively, States are required to take deliberate, specific and targeted steps to achieve the right to health and to deliver immediately on minimum requirements, such as access to vaccines without discrimination. Focused efforts are essential to remove barriers, pre-empt potential discrimination and monitor distribution of vaccines to avoid discrimination. The obligation of States to ensure access to vaccines includes avoiding any retrogression in the right to health and other economic and social rights.

12. The obligation to use the maximum available resources to secure the right to health[20] refers to the resources existing within a State and those available from the international community through international cooperation and assistance. States should consider economic relief measures, fiscal stimulus and social protection packages as necessary to mitigate the social and economic impacts of the pandemic. Transparency and accountability are key principles underpinning State obligations to uphold the right to health and are particularly relevant in relation to decision-making, communication with stakeholders and access to remedy.

13. Furthermore, States have the obligation to protect people against human rights abuse by third parties, including businesses. To do so, States must take appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.[21] That encompasses States' control and influence over the conduct, including extraterritorially, of corporations within their territory or under their jurisdiction.[22] In the context of the right to health, States should adopt legislation or other measures to ensure that private actors, including companies, conform with human rights standards when providing health-care or other services, including relating to the development, production and distribution of vaccines.[23]

[17] See https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/IP/C/W669.pdf&Open=True; and https://www.theguardian.com/world/2021/mar/05/covid-vaccines-who-chief-backs-patent-waiver-to-boost-production.

[18] See https://www.wto.org/english/news_e/news21_e/mc12_26nov21_e.htm.

[19] See https://www.theguardian.com/commentisfree/2021/mar/05/vaccination-covid-vaccines-rich-nations.

[20] Committee on Economic, Social and Cultural Rights, general comment No. 25 (2020) on science and economic, social and cultural rights, para. 47.

[21] Guiding Principles on Business and Human Rights (A/HRC/17/31, annex), principle 1.

[22] Committee on Economic, Social and Cultural Rights, general comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, paras. 26 and 28.

[23] See https://www.ohchr.org/Documents/Publications/Factsheet31.pdf, p. 26.

C. Responsibilities of businesses

14. Pharmaceutical companies can contribute in various ways to the realization of the right to the highest attainable standard of health. The development and production of vaccines that effectively respond to a global pandemic are significant contributions in that regard, as is providing individuals and communities with important, objective information about public health issues.

15. Like all businesses, pharmaceutical companies have a responsibility to respect human rights, as indicated in the Guiding Principles on Business and Human Rights. They should avoid infringing on the human rights of others and address adverse human rights impacts with which they are involved.[24] Meeting that responsibility requires undertaking appropriate human rights due diligence to identify, prevent, mitigate and address any risk or actual human rights impacts of their activities and operations.[25] It also encompasses communicating publicly on how the company has addressed its human rights impacts.[26]

16. Human rights due diligence in the context of vaccines includes assessing, mitigating and addressing adverse human rights risks and impacts from activities such as the development, pricing, sale and distribution of vaccines. More specifically, in taking decisions regarding pricing and distribution, the adverse impacts that such decisions have with regard to discriminatory access to vaccines, in particular for those in situations of vulnerability and marginalization, should be considered.[27] To meet their responsibility to respect human rights, pharmaceutical companies should refrain from causing or contributing to adverse impacts on the rights to life, to health or to development.

17. According to several human rights mechanisms,[28] pharmaceutical companies have failed to meet their human rights responsibilities in the context of the pricing structure for the COVID-19 vaccine, records on intellectual property, knowledge-sharing and technology-sharing, the allocation of available vaccine doses and overall transparency, the latter of which is a cardinal principle of international human rights. Without the disclosure of key information, it is not possible to properly determine, or meaningfully evaluate, access to vaccines policies and practices,[29] which is a major concern given the nature of vaccines as a global public good. Other concerns include prioritization of the delivery of vaccines to high-income countries, failure to share the technology and knowledge needed to increase supply and the limited transparency regarding vital information about contracts, pricing and dose allocation.[30]

18. Pharmaceutical companies should not seek to limit, diminish or compromise the flexibilities and other features of the intellectual property regime that are designed to protect and promote access to existing medicines, which is also applicable to COVID-19 vaccines.[31] They should refrain from invoking intellectual property rights in a manner that is inconsistent with the right of every person to have access to a safe and effective vaccine for COVID-19. Companies should also recognize the right of countries to rely on the provisions in the TRIPS Agreement to fulfil their obligation to guarantee, as expeditiously as possible, universal and equitable access to such a vaccine.[32]

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[24] Guiding Principles on Business and Human Rights, principle 11.

[25] Ibid., principle 15.

[26] Ibid., principle 21.

[27] See https://www.ohchr.org/Documents/Events/COVID-19_AccessVaccines_Guidance.pdf.

[28] See https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=26484&LangID=E; https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=27670&LangID=E; and https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27875&LangID=E.

[29] A/63/263, annex, paras. 6–8.

[30] Amnesty International, “A double dose of inequality, pharma companies and the COVID-19 vaccines crisis”, 2021, p. 20; see also https://www.oxfam.org/en/press-releases/rich-countries-have-received-more-vaccines-run-christmas-african-countries-have-all; and https://healthpolicy-watch.news/africa-covid-19-perc-vaccine/.

[31] A/63/263, annex, paras. 26 and 32.

[32] E/C.12/2021/1, para. 6.

19. Further to the Guiding Principles on Business and Human Rights, companies in any sector should take reasonable steps to prevent and mitigate harm to people in relation to any measures they take in the workplace in response to COVID-19.[33] Given that COVID-19 vaccines are considered among the main preventive measures to protect against infection with the disease and its adverse effects,[34] it is in line with those responsibilities for companies to actively support voluntary vaccination within their workforces and to not restrict or limit the ability of their employees to acquire access to vaccination programmes. In practice, companies should enable staff to take paid leave or paid time off to get vaccinated and to take medical leave for any vaccine-related side effects. Companies can also contribute to creating an enabling environment for the realization of the right to health and other rights affected by the pandemic, for example, by supporting public COVID-19 vaccination campaigns. An enabling environment for realizing all indivisible human rights and fundamental freedoms for all people in all countries, and the constant improvement of their well-being, free of all obstacles, is also supported by the right to development.

20. Corporate responsibilities to respect human rights work in tandem with their obligations to comply with national law and regulations protecting human rights. Business enterprises should comply in good faith with national laws and regulations that protect people against COVID-19, including in relation to vaccine mandates for the workforce or for access for third parties to the enterprise's premises or facilities. Companies should identify any human rights risks that may arise from implementing any legal obligations that may not fully align with relevant international human rights standards, through human rights due diligence, and take appropriate action to mitigate the risks, including by using or building leverage to address the problem.[35] Where a national law makes it difficult or impossible for the company to operate with respect for human rights, it should seek to honour the principles of international human rights to the greatest extent possible in the circumstances and be able to demonstrate their efforts in that regard.[36]

D. Human rights impact and concerns

21. In an interconnected world, where the virus acts everywhere, actions taken by a single State to protect the rights of its own population alone can be readily negated. As noted above, efforts to increase vaccine availability are hampered by current trade rules and by vaccine nationalism that is focused solely on domestic constituencies, while neglecting global needs.

22. The longer the COVID-19 pandemic continues as an acute crisis, including due to vaccine inequity, the greater the cumulative adverse impact on a range of human rights, including the rights to life, to health, to work, to education, to social security, to equality and to non-discrimination, will be. The human rights impact on those who are at a higher risk of adverse COVID-19 outcomes and those who are furthest behind are the most severe. The virus that causes COVID-19 itself infects without discrimination – all people are vulnerable to its threat. In its effects, however, COVID-19 is in many respects highly discriminatory, both in the severity of its impact on some people, and in the effects of the pandemic across people, groups and countries.[37] Uneven access to vaccines in many places has led in particular to poorer health outcomes for women and girls, national, ethnic, religious, racial and linguistic minority groups, indigenous populations, persons living in poverty, lesbian, gay, bisexual, transgender and intersex people, persons with disabilities, migrants, in particular undocumented migrants, stateless persons, persons living in hard-to-reach areas and others who were previously experiencing marginalization.

23. The failure to ensure equitable, affordable, fair, safe, timely and universal access to COVID-19 vaccines directly affects the right to life and the right to the highest attainable standard of health of millions of people. It has resulted in many preventable hospitalizations,

[33] See https://www.ohchr.org/Documents/Issues/Business/BusinessAndHR-COVID19.pdf.

[34] See https://www.who.int/emergencies/diseases/novel-coronavirus-2019/covid-19-vaccines/advice.

[35] Guiding Principles on Business and Human Rights, principle 19, commentary.

[36] Ibid., principle 23, commentary. For additional guidance on the issue, please https://www.ohchr.org/Documents/Issues/Business/RtRInterpretativeGuide.pdf, pp. 78–79.

[37] See https://www.ohchr.org/EN/NewsEvents/Pages/UNSG_HumanRights_COVID19.aspx.

illnesses and deaths. The continuing rise of COVID-19 cases and hospitalization therefor is increasing the strains on health systems, disrupting essential health services and diverting limited public resources from other sectors. Access to essential day-to-day primary care to prevent and manage some of the most common health problems has been particularly affected. Long-term care for chronic conditions, rehabilitation care and palliative end-of-life care continue to be disrupted, gravely affecting older persons and persons with disabilities. Mental health services have also been seriously disrupted in many countries, even as COVID-19 and the stresses related to its impact have had detrimental effects on mental health, resulting in an exponential rise in demand for mental health services.[38] Disruptions of supply chains continue to affect the availability of the essential medicines, diagnostics and personal protective equipment required to safely and effectively provide care.[39]

24. Mass immunization campaigns of children against other diseases were interrupted and postponed in many countries, putting some 228 million people – mostly children – at risk of contracting highly infectious diseases, such as measles, polio and yellow fever.[40] Disruptions of such routine immunization may increase the risk of the resurgence of diseases that the international community has worked hard to eradicate.

25. The prolonged pandemic has also meant continuing restrictions in some countries on access to sexual and reproductive health services, affecting in particular women and girls, including women living in poverty, women with disabilities, Roma women, undocumented migrant women, adolescents, women at risk and women who are survivors of domestic and/or sexual violence.[41]

26. The pandemic has also intensified pre-existing economic gaps and deepened social inequalities, while forcing more than 100 million people into poverty. More than 4 billion people have little or no social support, no health care and no income protection.[42] Without a sufficient supply of vaccines, societies in developing countries are unable to move from COVID-19 response to recovery, economies have plunged deeper into recessions and personal freedoms have continued to be curtailed.

27. The pandemic has also had detrimental effects on the right to education of children and the rights of women.[43] At the peak of the pandemic, more than 1.6 billion students were shut out of school due to lockdowns. Schools were closed worldwide for almost 80 per cent of in-person instruction time during the first year of the crisis.[44] Efforts to reach women, children and adolescent health-related Sustainable Development Goal targets by 2030 were already behind schedule before the outbreak of the COVID-19 pandemic. The pandemic has reversed many of the development gains that had been made, as countries have sought to address the impact of the pandemic by diverting already limited resources from essential services.[45] Gaps in coverage of social protection systems and inadequate social protection benefits contributed to the inequalities that accelerated and deepened the impact of the COVID-19 pandemic. The United Nations Children's Fund estimates that the pandemic

[38] World Health Organization (WHO), "The impact of COVID-19 on mental, neurological and substance use services", 2020; Dainius Pūras, "COVID-19 and mental health: challenges ahead demand changes", *Health and Human Rights Journal*, 14 May 2020.

[39] See https://www.who.int/news/item/23-04-2021-covid-19-continues-to-disrupt-essential-health-services-in-90-of-countries.

[40] See, https://www.unicef.org/supply/media/9741/file/COVID-19-Impact-on-Global-Logistics-and-Supplies-September-2021.pdf, p. 8.

[41] See https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2020/06/report/policy-brief-the-impact-of-covid-19-on-women/policy-brief-the-impact-of-covid-19-on-women-en-1.pdf, p. 10.

[42] See https://www.un.org/sg/en/node/260030.

[43] See https://www.ohchr.org/Documents/HRBodies/TB/COVID19/Guidance_Note.docx.

[44] UNICEF, "Preventing a lost decade: urgent action to reverse the devastating impact of COVID-19 on children and young people", December 2021, p. 15.

[45] Independent Accountability Panel for Every Woman, Every Child, Every Adolescent, "The health of women, children and adolescents is at the heart of transforming our world: empowering accountability", Geneva, March 2021; see also https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/1_Global/INT_CRC_STA_9095_E.docx.

could push 142 million more children into poverty.[46] According to the United Nations Development Programme, 8 out of 10 people pushed into poverty directly by the pandemic are projected to live in the world's poorest countries in 2030.[47] The pandemic has also worsened food insecurity, as prices rise due to global shortages and supply chain disruptions. Across the world, 15 million more people are at risk of starvation than was the case before the COVID-19 pandemic.[48]

28. Repeated lockdowns and other restrictions on movement have exposed many women and girls to gender-based violence in the home.[49] With the widespread closure of schools and the increased economic insecurity of families, girls have been rendered vulnerable to giving up their education, being married in coercive circumstances and becoming subject to other harmful survival strategies.[50]

29. The burden of the pandemic is not experienced equally by all people.[51] Higher COVID-19 infection rates and poor outcomes for persons belonging to minority groups and people belonging to marginalized and vulnerable groups have been due in part to structural inequalities and discrimination. Persons belonging to minority groups have often been left behind in the design of the health responses to the COVID-19 pandemic, and vaccination rates among minority communities are lower than among others.[52] The pandemic has revealed structural inequalities and aggravated many of the human rights challenges already experienced by migrants in vulnerable situations. Migrant workers in some regions, for example, are not prioritized for vaccination, despite the high risks of COVID-19 infection that they face, due to poor living conditions, and migrant workers are also at risk of being excluded from national vaccination programmes because of irregular migration status.[53] Many millions of displaced persons are insufficiently considered in COVID-19 vaccine distribution schemes. Many persons with disabilities around the world who are at a higher risk of adverse COVID-19 outcomes have not been prioritized for vaccination and face accessibility barriers.[54] Women and girls also face discrimination in vaccine distribution for many reasons, including higher rates of poverty among them and the impact of societal norms.[55]

30. The need to contain the spread of COVID-19 to protect the health and lives of their populations continues to push many States to introduce measures that have an impact on human rights, such as temporary restrictions on freedom of movement and the temporary closure of schools, public facilities and spaces and businesses. Although some such measures have been necessary and proportionate to protect public health, however, other measures were not compatible with obligations under international human rights law. When limiting rights in order to protect public health, States have an obligation to take only necessary and proportionate measures, which are the least intrusive options that can achieve the desired result. In current circumstances, ensuring equitable access to vaccines for all should be

[46] See https://www.unicef.org/supply/media/9741/file/COVID-19-Impact-on-Global-Logistics-and-Supplies-September-2021.pdf.

[47] See https://sdgintegration.undp.org/covid-impact-low-and-medium-hdi-groups; and https://news.un.org/en/story/2021/09/1100192.

[48] There are 45 million people at risk of famine who require urgent intervention, according to the World Food Programme.

[49] UN-Women, "Measuring the shadow pandemic: violence against women during COVID-19", 24 November 2021, p. 19.

[50] See https://www.ohchr.org/Documents/Issues/Women/COVID-19_and_Womens_Human_Rights.pdf.

[51] See https://apps.who.int/iris/bitstream/handle/10665/334299/WHO-2019-nCoV-SAGE_Framework-Allocation_and_prioritization-2020.1-eng.pdf.

[52] See https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25916&LangID=E.

[53] A/HRC/47/23, para. 33; see also https://www.ohchr.org/Documents/Issues/Migration/CMWSPMJointGuidanceNoteCOVID-19Migrants.pdf.

[54] See also https://www.ohchr.org/Documents/HRBodies/CRPD/Joint_Statement_Persons_with_Disabilities_COVID19.docx.

[55] See https://www.ohchr.org/Documents/HRBodies/TB/COVID19/Guidance_Note.docx; and https://www.ohchr.org/Documents/Issues/Women/COVID-19_and_Womens_Human_Rights.pdf.

pursued fully as a key means to meet public health objectives with the least possible restrictions on human rights.

31. The introduction of mandatory COVID-19 vaccine certificates for travel and access to public spaces or activities can pose human rights risks. Care should be taken to ensure that vaccine certificates are not used more broadly than necessary, including for non-public health purposes, and are not employed in a discriminatory fashion, including based on nationality and/or country of origin or migration status. Reactions of States, such as the imposition of travel restrictions immediately on countries where the Omicron variant was first detected, pose a risk of creating a disincentive for vital reporting on new variants, thereby jeopardizing the world's ability to quickly respond to, and recover from, the pandemic and its detrimental human rights impact.

32. Ensuring vaccine equity requires addressing the higher risk of severe illness and mortality related to COVID-19 infection among the most disadvantaged or marginalized groups. Decisions on priority consideration for vaccinations should be made on the basis of appropriate criteria reflecting the best available scientific evidence and in line with human rights standards and norms, while avoiding exclusionary approaches that reinforce existing lines of inequality.[56] Allocation frameworks that are focused solely on clinical vulnerability to infection, and that do not consider vulnerabilities due to underlying determinants of health, are inadequate. Vaccine prioritization should therefore be undertaken by taking into account the vulnerabilities, risks and needs of groups that, because of underlying societal, geographical or biomedical factors, are at risk of experiencing greater burdens from the COVID-19 pandemic.[57] The determination of vaccine recipients should not exclude anyone explicitly or implicitly on the basis of older age, disability, race, gender, religion, migration status, descent, status or other discriminatory bases and should be conducted through a fair, transparent, inclusive and accountable process.[58]

33. An essential element of vaccine equity is human rights-based governance, which requires transparency in the development of national health strategies and plans, including immunization campaigns,[59] as well as transparency in contracts between governments and pharmaceutical companies. Currently, there is insufficient information that is publicly available for many locations regarding the funding agreements for, and the development, procurement, allocation and distribution of, COVID-19 vaccines. That lack of transparency and the scale and complexity of the COVID-19 vaccination rollouts worldwide have also given rise to misappropriation and corruption risks, undermining the effectiveness of the global response to the pandemic and exacerbating its human rights impact. That risk is particularly pronounced when vaccine supplies are limited and global demand is high. There is also a risk of corruption surrounding decision-making related to the allocation of vaccines to particular priority groups.[60]

34. COVID-19 responses worldwide, including vaccine allocation, have tended to be top-down, with central authorities establishing rules and regulations. The common failure to adequately engage communities and groups at risk of exclusion has fuelled responses that have fostered inequalities and discrimination. The meaningful participation of civil society and engagement of communities in the development of vaccine distribution protocols, in the administration of vaccines and in policies concerning the prioritization of allocations are necessary to ensure greater effectiveness and to curb corruption in that sector.[61]

35. Similarly, access to objective, trustworthy information, two-way dialogue and open debate are essential attributes of an environment in which people trust authorities' health

[56] See https://www.ohchr.org/Documents/Issues/Women/COVID-19_and_Womens_Human_Rights.pdf; and E/C.12/2020/1.

[57] WHO, "SAGE values framework for the allocation and prioritization of COVID-19 vaccination". 13 September 2020.

[58] See https://www.ohchr.org/Documents/Issues/Women/COVID-19_and_Womens_Human_Rights.pdf.

[59] Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000) on the right to the highest attainable standard of health.

[60] United Nations Office on Drugs and Crime, "COVID-19 vaccines and corruption risks: preventing corruption in the manufacture, allocation and distribution of vaccines", policy paper, 8 January 2021.

[61] See https://www.ohchr.org/Documents/Issues/Women/COVID-19_and_Womens_Human_Rights.pdf.

advice and accept necessary and appropriate governmental measures applied to overcome the pandemic, including vaccines. Governments too often face considerable trust deficits, which must be overcome for vaccine messaging to be fully effective. It is critical to preserve open discussion spaces and make them accessible to different communities, in particular to those at risk of being left behind.

E. Growing inequalities between States and unequal recoveries

36. The COVID-19 pandemic has resulted in a global crisis and precipitated a collapse of economic activity that is without precedent in recent history.[62] The pandemic's economic impact has fallen disproportionately on developing countries, which were already more vulnerable before the crisis and now face an even more challenging road to recovery.

37. Unequal vaccine access has emerged as a principal fault line in the global recovery. Growing inequalities, from lack of access to vaccines and uneven recovery across geographical, income and sectoral lines, further widen existing inequalities, with low-income developing countries at risk of being pushed further behind, contrary to the promise of building back better.

38. Vaccine nationalism denies individuals and peoples their inalienable human right to development, which entitles all people everywhere to equitably participate in, contribute to and enjoy development. It negates equal opportunities for all nations and entire world populations. It leads to setbacks in development, exacerbating poverty and inequality within and among nations, and widening gaps in global inequalities and development.

39. Unless vaccine access is boosted in developing countries, the pandemic will continue to undermine global and regional supply chains, given the degree of interconnection of production systems around the world. Rapid increases in demand as economies have reopened has pushed up prices in key commodities, such as oil and metals, and food prices are also rising, especially in emerging markets. Tensions along supply chains caused by the pandemic have added to cost pressures, and shipping costs have increased sharply.[63] All of those factors enhance pre-existing economic pressures, with particular effects on developing countries and vulnerable populations.

40. In low-income and middle-income countries, lack of access to vaccines, alongside fiscal constraints, is hindering recovery. According to the latest International Monetary Fund estimates, of the global fiscal stimulus in response to the pandemic amounting to $16.9 trillion, 85.9 per cent of the spending was in advanced economies, whereas emerging and developing economies accounted for only 13.8 per cent and 0.4 per cent, respectively.[64] Vaccination has become a crucial factor in determining the level of labour market recovery.[65] The optimism that was emerging at the beginning of 2021 has faded in the face of the effects of new waves of the pandemic, the appearance of new COVID-19 variants and continuing vaccine inequity.

41. Inequitable distribution of vaccines across countries is not only counter to international legal obligations, but it also undermines the achievement of the Sustainable Development Goals.[66] The cost of delayed vaccination could lead to a lost decade for development and to a lost generation of poorly educated, unemployed, disaffected young people. It is estimated that delayed vaccination timelines will cost the global economy $2.3 trillion in gross domestic product losses by 2025.[67]

[62] Organization for Economic Co-operation and Development (OECD), "Tax and fiscal policies after the COVID-19 crisis", 14 October 2021.

[63] OECD, *Economic Outlook*, vol. 2021, No. 2.

[64] International Monetary Fund, *Fiscal Monitor*, October 2021.

[65] See https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms_824092.pdf.

[66] United Nations Development Programme (UNDP), Data Futures Platform, "Impact of vaccine inequity on economic recovery". Available at https://data.undp.org/vaccine-equity/impact-of-vaccine-inequity-on-economic-recovery/.

[67] *The Economist* Intelligence Unit, "How much will vaccine inequity cost?", 2021.

42. Developing countries have in some cases not even been able to fully vaccinate their health-care workers and their most at-risk populations, and they may not achieve the levels of growth from before the COVID-19 pandemic until 2024.[68] The ongoing diversion of resources to COVID-19 responses can also keep countries from making the investments needed to achieve the realization of other economic, social and cultural rights.

43. The ripple effects of vaccine inequity, which forces countries to impose renewed restrictions and puts additional financial strain on budgets, has shrunk fiscal space,[69] including for human rights, social protection and universal health coverage, pushing many developing countries into multiple interlinked crises – a debt crisis, a development crisis and a human rights crisis. In addition, the prolonged nature of the pandemic undermines the capacity of developing countries to respond to the accelerating effects of climate change and to make the investments necessary to reduce emissions and to facilitate the adaptation and resilience of their societies.

44. Unequal access to vaccines exacerbates existing economic and social inequalities. Weakened social cohesion enhances a country's fragility and diminishes its resilience to fresh crises and shocks. Discontent at the socioeconomic and human rights consequences of certain pandemic-related measures, which are being prolonged by insufficient vaccination levels, risks breeding violent extremism and terrorism.[70] Those human rights gaps and associated factors have the potential to escalate societal tensions and violence, which are already growing around the world.

III. Promoting vaccine equity

A. Addressing obstacles to vaccine equity

45. The call to make essential medicines and vaccines, including against COVID-19, affordable and available to everyone, everywhere, is rooted in an approach of universal health coverage. Urgent action is required to eliminate all obstacles to ensuring that vaccines reach everyone.

46. Vaccines should be treated as public goods, yet the current cost of vaccines represents a significant financial burden for low-income countries and constitutes another obstacle to vaccine equity. Under current pricing schemes, low-income countries would need to increase their health expenditure by 30 to 60 per cent to reach the target of vaccination of 70 per cent of their population. By contrast, high-income countries would need to increase their health expenditure by only 0.8 per cent to achieve the same vaccination rate.[71]

47. Managing misinformation and disinformation around vaccines, which can drive vaccine hesitancy, is a critical part of effectively controlling the pandemic.[72] Such management includes providing credible, objective, timely and accessible information about COVID-19 vaccinations, including the benefits and risks of the vaccine, and promoting facts and scientific evidence. Measures must be grounded firmly in international human rights law, including respect for the rights to freedom of opinion and expression and privacy.[73] Limiting stakeholder involvement and participation in the response creates a lack of critical feedback, including in debates involving experts, medical professionals, journalists and influencers on social media, undermining an effective response to COVID-19.[74]

[68] See https://www.who.int/news/item/22-07-2021-vaccine-inequity-undermining-global-economic-recovery.

[69] OECD, "Policy responses to coronavirus disease (COVID-19), tax and fiscal policies after the COVID-19 crisis", 14 October 2021, p. 12.

[70] Counter-Terrorism Committee Executive Directorate, "Update on the impact of the COVID-19 pandemic on terrorism, counter-terrorism and countering violent extremism", pp. 18–19.

[71] UNDP, Data Futures Platform.

[72] World Health Assembly resolution WHA73.1 on the COVID-19 response.

[73] See also A/HRC/47/25.

[74] See https://www.ohchr.org/Documents/Events/COVID-19_AccessVaccines_Guidance.pdf.

48. As part of their obligation to ensure access to vaccines, States should use all available means to address vaccine hesitancy, including hesitancy deriving from lack of confidence or trust in health systems, concerns about vaccine safety or efficacy, personal beliefs about vaccination or other reasons. To improve levels of acceptance, it is essential that public information campaigns reach all social groups, in particular the most marginalized,[75] including in the context of COVID-19, to ensure that no one is left behind as part of the obligation to ensure access to vaccines.

B. International assistance and cooperation

49. Global vaccine production currently stands at 1.5 billion doses per month, therefore, there are significant distribution and allocation problems, because theoretically the supply is sufficient to meet the targets set by the World Health Organization for global vaccination. Contributions and pledges to finance and provide vaccinations have increased to important levels, but that has not yet translated into sufficiently significant increases in vaccinations in low-income countries. Additional investment is needed to expand coverage, including for future rounds of vaccines.

50. Fulfilling the human rights obligations of international assistance and cooperation between developed and developing countries is crucial to ensure that all relevant health technologies, intellectual property data and know-how on COVID-19 vaccines and treatment are widely shared as a global public good.[76] That requires that countries coordinate their efforts and that those which are able to do so provide assistance, especially economic, scientific and technical, to developing countries for immunization against major infectious diseases and for the prevention, treatment and control of epidemic and endemic diseases.[77]

51. In the 2030 Agenda for Sustainable Development, States pledged to revitalize the Global Partnership for Sustainable Development and strengthen the means of implementation for sustainable development, including through enhanced North-South, South-South and triangular regional and international cooperation on and access to science, technology and innovation.[78] In line with Sustainable Development Goal 10, to reduce inequality within and among countries,[79] solidarity, cooperation and partnership among States and all stakeholders is vital to achieving all the Sustainable Development Goals.

52. There is an urgent need to strengthen international cooperation, in line with the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights and the Declaration on the Right to Development, to advance all human rights and to enable all people to share the benefits of scientific and technological progress, including access to vaccines as a global public good. Through vaccine financing operations, the World Bank, for example, is assisting countries globally with vaccine procurement and deployment.[80]

53. States should step up their support and recommit to existing global and regional initiatives and partnerships aimed at accelerating development, production and equitable

[75] Joint Declaration on Freedom of Expression and "Fake News", Disinformation and Propaganda, 3 March 2017.

[76] See https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26484.

[77] Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000), paras. 43–45. See also https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26484&LangID=E.

[78] Sustainable Development Goal 17, to strengthen the means of implementation and revitalize the Global Partnership for Sustainable Development, and target 17.6, to enhance North-South, South-South and triangular regional and international cooperation on and access to science, technology and innovation and enhance knowledge-sharing on mutually agreed terms, including through improved coordination among existing mechanisms, in particular at the United Nations level, and through a global technology facilitation mechanism. See also the Addis Ababa Action Agenda of the Third International Conference on Financing for Development, paras. 120–121, https://sustainabledevelopment.un.org/content/documents/2051AAAA_Outcome.pdf.

[79] Sustainable Development Goal 10, to reduce inequality within and among countries.

[80] See https://blogs.worldbank.org/voices/tackling-vaccine-inequity-africa.

access to COVID-19 diagnostics, therapeutics and vaccines, including the African Vaccine Acquisition Trust[81] of the African Union, the Revolving Fund of the Pan American Health Organization[82] and the COVID-19 Response Mechanism of the Global Fund.[83] The COVID-19 Vaccine Global Access (COVAX) Facility[84] has achieved significant progress in securing funding and pooling procurement of vaccines for an unprecedented worldwide distribution of COVID-19 vaccines. It continues to be hampered, however, by export bans, the prioritization of bilateral deals by manufacturers and countries, ongoing challenges in scaling up vaccine production and delays in filing for regulatory approval.[85] There is a need to expand, accelerate and systematize dose donations with sufficient shelf lives from countries that are at advanced stages of their vaccination programmes. Under the COVID-19 Technology Access Pool,[86] manufacturers can easily pool technology and expertise, which would boost the overall supply and facilitate vaccine access.

54. States and pharmaceutical companies must also ensure universal access to the full benefits of therapeutics that are being developed to mitigate the impact of COVID-19. There are promising developments of treatments with significant antiviral effect and the capacity to reduce hospitalization considerably. The use of the Medicines Patent Pool in relation to COVID-19 is an encouraging step. For example, it has reached an agreement with some pharmaceutical companies to issue non-exclusive sublicenses for the manufacture of their antiviral medicines.[87]

55. The prospective World Health Organization convention, agreement or other international instrument on pandemic prevention, preparedness and response[88] constitutes an opportunity to ensure that any response to a future pandemic is strongly grounded in international human rights law and to address the ongoing challenges of inequitable access to vaccines. Such an international instrument should reaffirm and emphasize the obligation of States, and the responsibility of others, to ensure that vaccines are affordable for everyone and accessible in a timely, equitable and universal manner and that vaccine distribution is non-discriminatory. It is also critical that such an instrument reaffirms the obligations of States to take all necessary measures to seek and provide international assistance and cooperation and to ensure global solidarity, justice and equity, in response to health emergencies and pandemics. Similarly, it should restate the human rights responsibilities of pharmaceutical companies involved in the development, production and distribution process of vaccines, as set out in the Guiding Principles on Business and Human Rights. Meaningful consultative processes guided by the right to participation throughout the drafting process will be essential to ensure that the prospective instrument will embrace the human rights principles necessary to guide the response to future public health emergencies.

IV. Conclusions and recommendations

56. **The uneven rollout and distribution of COVID-19 vaccines has been one of the most significant failures in the international response to the pandemic, with serious consequences for the enjoyment of human rights and realization of the right to development. Building back better will require ensuring that human rights principles inform the implementation of the 2030 Agenda, as affirmed by the Secretary-General in "The highest aspiration: a call to action for human rights".**

57. **Any recovery effort must address the root causes underlying the devastation wrought by the pandemic. In "Our common agenda", the Secretary-General outlined**

[81] See https://africacdc.org/news-item/african-vaccine-acquisition-trust-delivers-12-000-doses-of-covid-19-vaccine-to-the-african-union/.

[82] See https://www.paho.org/en/revolvingfund.

[83] See https://www.theglobalfund.org/en/covid-19/response-mechanism/.

[84] See https://www.gavi.org/covax-facility.

[85] See https://news.un.org/en/story/2021/09/1099422.

[86] See https://www.who.int/initiatives/covid-19-technology-access-pool.

[87] See https://medicinespatentpool.org/covid-19/.

[88] World Health Assembly decision SSA2(5), entitled "The world together: establishment of an intergovernmental negotiating body to strengthen pandemic prevention, preparedness and response".

the threats posed by deepening inequality, in particular those which have been exposed and are now being exacerbated by the COVID-19 pandemic, and called for a new social contract to rebuild public trust between people and their Governments.

58. **States should use this opportunity to integrate human rights, including the right to development, into their responses to, and recovery from, the pandemic, moving towards more comprehensive welfare systems. This is a crucial opportunity to revamp social protection programmes and to ensure universal health care, in order to better protect populations worldwide against future crises.**

59. **Beyond the serious impact on the lives and health of millions, the human rights impact of vaccine delays is profound. Vaccine inequality is a substantial factor in sharply divergent economic recoveries. The COVID-19 pandemic has highlighted the interrelationship between the health and economic well-being of one country and that of all countries. Such interrelatedness calls for an approach to meeting human rights obligations that includes international cooperation and emphasizes the importance of economic relief measures, fiscal stimulus and social protection packages to mitigating the social and economic impacts of the pandemic.**

60. **Corresponding debt relief should be extended to all countries in need, including middle-income countries, in order to provide developing countries with the necessary policy and fiscal space to ring-fence and expand social spending and to strengthen health systems and build resilience in the longer-term.**

61. **Ensuring universal and equitable access to COVID-19 vaccines is essential to protecting the right to health. States, both in their own interests and for the common good, must invest in global vaccine production to better meet their human rights obligations and increase their capacity to distribute vaccines effectively. Concurrently, transnational research and exchange between developed and developing countries should be increased in order to diversify production and innovation in health, medicines and vaccines.**

62. **Stockpiling of COVID-19 vaccines is not consistent with States' human rights obligations, given that universal and equitable access to vaccines globally is not yet ensured. States should take urgent steps to substantially increase the supply of vaccines to the COVAX Facility for low-income and low-middle income countries and to support delivery efforts. Ensuring equitable global distribution may necessitate States with high vaccination rates that have reserved vaccines to reallocate available production for a more equitable vaccine rollout.**

63. **The call for COVID-19 vaccines to be treated as global public good must be translated into action. This requires strong political will for transformative changes at the national and international levels. In particular, obstacles to ensuring that vaccines and treatments reach everyone, including licensing processes that are unduly complex and restrictive, must be eliminated. Under the TRIPS Agreement, States should consider the introduction of a temporary waiver of relevant intellectual property rights until the COVID-19 pandemic is contained, in line with the right of World Trade Organization members to protect public health and, in particular, to promote access to medicines for all.**[89] **Pharmaceutical companies should respect the right of States to use such provisions.**[90]

64. **Pharmaceutical companies and other business enterprises engaged in developing, producing and distributing vaccines should fully meet their responsibilities to respect human rights, as set out in the Guiding Principles on Business and Human Rights. That includes undertaking human rights due diligence across all activities and business relationships related to vaccine development, production and distribution and taking effective action to prevent, mitigate and address any adverse human rights impact, including on the right to health.**

[89] Declaration on the Agreement on Trade-Related Aspects of Intellectual Property Rights and Public Health, adopted by the Word Trade Organization on 14 November 2001.

[90] E/C.12/2020/1.

65. **In order to meet their duty to protect people against business-related human rights abuses in the context of vaccines, States should put into place effective legal and policy frameworks, including with regard to human rights due diligence, to ensure that business enterprises involved with vaccine development, production and distribution operate in accordance with their human rights responsibilities, as set out in the Guiding Principles on Business and Human Rights.**

66. **Vaccine hesitancy is a global threat and must be addressed by ensuring that factual and timely information on the pandemic and vaccines reaches all people, in particular the most marginalized, as part of the obligation to ensure access to COVID-19 vaccines. Managing misinformation and disinformation around vaccines, which can drive vaccine hesitancy, is a critical part of controlling the pandemic.**

67. **A human rights-based approach into health emergency preparedness, response and recovery should be integrated into the prospective World Health Organization convention, agreement or other international instrument on pandemic prevention, preparedness and response. Meaningful participation of relevant actors in the drafting process is central to ensuring its strong grounding in international human rights law.**