



# Economic and Social Council

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## Committee on Economic, Social and Cultural Rights

### Statement on universal and equitable access to vaccines for the coronavirus disease (COVID-19)

#### Statement by the Committee on Economic, Social and Cultural Rights\*

1. A safe and effective vaccine is expected to reduce the health and life risks posed by the coronavirus disease (COVID-19), while allowing the progressive lifting of some restrictive measures that have been necessary to combat the spread of the virus. It will also help to recover from the serious negative impact that these measures have had on the enjoyment of economic, social and cultural rights, especially by the most disadvantaged and marginalized populations. For that reason, it is important and encouraging news for the world that several vaccines for COVID-19 might be approved soon by health authorities, after following the relevant World Health Organization (WHO) technical guidance documents for COVID-19 vaccines and other biologicals in order to guarantee their safety and effectiveness.<sup>1</sup> In that context, the Committee considers it necessary to remind State parties of their obligation under the Covenant in this area, in order to avoid unjustified discrimination and inequalities in access to COVID-19 vaccines.<sup>2</sup>

2. Every person has a right to the enjoyment of the highest attainable standard of physical and mental health,<sup>3</sup> which includes access to immunization programmes against the major infectious diseases.<sup>4</sup> Every person also has a right to enjoy the benefits of scientific progress,<sup>5</sup> which includes access to all the best available applications of scientific progress necessary to enjoy the highest attainable standard of health.<sup>6</sup> Both rights imply that every person has a right to have access to a vaccine for COVID-19 that is safe, effective and based on the application of the best scientific developments.

3. States have an obligation to take all the measures necessary, to the maximum available resources, to guarantee access to vaccines for COVID-19 to all persons, without discrimination.<sup>7</sup> The duty of States to provide immunization against the major infectious diseases and to prevent and control epidemics is a priority obligation concerning the right to

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\* Adopted by the Committee intersessionally on 27 November 2020.

<sup>1</sup> See WHO, "Relevant WHO technical documents for COVID-19 vaccines and other biologicals", 25 September 2020, 25 September 2020.

<sup>2</sup> For a general view of the obligations of State parties under the Covenant in relation to the pandemic, see the statement of the Committee of 6 April 2020 on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights (E/C.12/2020/1).

<sup>3</sup> International Covenant on Economic, Social and Cultural Rights, art. 12; Universal Declaration of Human Rights, art. 25.

<sup>4</sup> Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000), para. 36.

<sup>5</sup> International Covenant on Economic, Social and Cultural Rights, art. 15; Universal Declaration of Human Rights, art. 27.

<sup>6</sup> Committee on Economic, Social and Cultural Rights, general comment No. 25 (2020), para. 70.

<sup>7</sup> See International Covenant on Economic, Social and Cultural Rights, arts. 2, 12 and 15.



health.<sup>8</sup> Under the current conditions, States are required to give maximum priority to the provision of vaccines for COVID-19 to all persons.

4. The right to health requires States to make health facilities, services and goods, including vaccines, available, accessible, acceptable and of good quality.<sup>9</sup> Vaccines for COVID-19 must not only be produced and made available; they must also be accessible to all persons. In order to ensure access to COVID-19 vaccines, States must, firstly, remove any discrimination based on grounds such as religion, national origin, sex, sexual orientation and gender identity, race and ethnic identity, age, disability, migration status, social origin, poverty or any other relevant status; secondly, guarantee physical accessibility to vaccines, especially for marginalized groups and people living in remote areas, using both State-run and private channels and by strengthening the capacity of health systems to deliver vaccines; thirdly, guarantee affordability or economic accessibility for all, including by providing vaccines free of charge, at least for lower income persons and the poor; and fourthly, guarantee access to relevant information, especially through the dissemination of accurate scientific information on the safety and effectiveness of different vaccines, and public campaigns protecting people against false, misleading or pseudoscience information concerning vaccines, which is rapidly spreading on the Internet and social media.<sup>10</sup>

5. It is impossible to guarantee that everyone will have immediate access to a vaccine for COVID-19, even if several vaccines are approved soon. The mass production and distribution of vaccines implies not only enormous financial costs but also complex administrative and health procedures. The prioritization of access to vaccines by specific groups is unavoidable, at least in the initial stages, not only nationally but also at the international level. In accordance with the general prohibition of discrimination,<sup>11</sup> such prioritization must be based on medical needs and public health grounds. According to these criteria, priority may be given, for instance, to health staff and care workers, or to persons presenting greater risks of developing a serious health condition if infected by SARS-COV-2 because of age, or preexisting conditions, or to those most exposed and vulnerable to the virus owing to social determinants of health, such as people living in informal settlements or other forms of dense or instable housing, people living in poverty, indigenous peoples, racialized minorities, migrants, refugees, displaced persons, incarcerated people and other marginalized and disadvantaged populations. In any case, criteria of prioritization must be established through a process of adequate public consultation, be transparent and subject to public scrutiny and, in the event of dispute, to judicial review to avoid discrimination.

6. Many of the vaccines that could be approved have been developed by private companies and may be subject to the intellectual property regime. These companies expect to obtain a profit, and it is fair that they receive reasonable compensation for their investments and research. The Committee reminds States parties, however, that intellectual property is not a human right but a social product with a social function.<sup>12</sup> States parties consequently have a duty to prevent intellectual property and patent legal regimes from undermining the enjoyment of economic, social and cultural rights by, for example, making critical public goods, such as vaccines or medicines, inaccessible to developing countries or impoverished communities because of unreasonable cost structures.<sup>13</sup> Thus, as stated in the Doha Declaration on the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement and Public Health, the intellectual property regime should be interpreted and implemented in a manner supportive of the duty of States “to protect public health”.<sup>14</sup> States parties should use, when necessary, all the flexibilities of the TRIPS Agreement, such as compulsory licenses, to ensure access to a COVID-19 vaccine for all. These flexibilities will in all likelihood, however, be insufficient to face adequately the pandemic, especially in developing countries. Some States have therefore proposed, as an additional measure, that

<sup>8</sup> Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000), para. 44.

<sup>9</sup> *Ibid.*, para. 12.

<sup>10</sup> See Committee on Economic, Social and Cultural Rights, general comment No. 25 (2020), para. 52.

<sup>11</sup> See International Covenant on Economic, Social and Cultural Rights, art. 2. See also Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009).

<sup>12</sup> Committee on Economic, Social and Cultural Rights, general comment No. 17 (2006), paras. 1–2.

<sup>13</sup> *Ibid.*, para. 35.

<sup>14</sup> See Committee on Economic, Social and Cultural Rights, general comment No. 25 (2020), para. 69.

the World Trade Organization (WTO) to waive some of the provisions of the TRIPS Agreement in the context of the global health crisis. The proposal, supported by a number of special procedures of the Human Rights Council,<sup>15</sup> should be considered and implemented in order to facilitate the prevention, containment and treatment of COVID-19 through the global affordability of vaccines.

7. Business entities, including pharmaceutical companies, have, in accordance with international standards, the obligation, as a minimum, to respect the rights outlined in the International Covenant on Economic, Social and Cultural Rights.<sup>16</sup> Such entities should therefore 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 and with the obligation of States to guarantee, as expeditiously as possible, universal equitable access to such a vaccine.

8. Under the Covenant, States parties may be held directly responsible for the action or inaction of business entities under certain circumstances.<sup>17</sup> In addition, they have an extraterritorial obligation to take the measures necessary to protect economic, social and cultural rights to ensure that corporations domiciled in their territory and/or under its jurisdiction do not violate these rights abroad.<sup>18</sup> States should therefore take all measures necessary to ensure that such business entities do not invoke intellectual property law, either in their own territory or abroad, in a manner that is inconsistent with the right of every person to have access to a safe and effective vaccine for COVID-19.

9. Under the Covenant, States have a duty of international cooperation and assistance to ensure universal equitable access to vaccines wherever needed.<sup>19</sup> The fact that the current crisis is a pandemic reinforces this obligation of States.<sup>20</sup> States must therefore strengthen their international cooperation to guarantee, as soon as possible, universal and equitable access to vaccines for COVID-19 globally, including for populations of least developed countries, which might not have the financial resources to guarantee access to vaccines for their people.

10. It is understandable that States give a certain priority to ensuring access to vaccines for their own citizens first. This concern should not, however, lead to a form of health isolationism or to a race for COVID-19 vaccines among States, in which some States, especially developed States, compete with others to strike costly and non-transparent deals with private companies to secure vaccines to all or most of their own citizens first. This competition among States may lead to an increase in the price of vaccines and might even create a temporary monopoly of access to the first vaccines produced for some developed States, undermining, at least temporarily, the possibility of other countries, especially developing States, to ensure access to vaccine for their population. This competition among States for vaccines is counterproductive in terms of a global health approach, as it makes the pandemic much more difficult and lengthy to control. As long as significant parts of the world population have no access to measures that control, prevent and treat COVID-19, and to its vaccines, the risk of upsurges in the pandemic remain. Furthermore, such competition for a vaccine runs counter to the extraterritorial obligations of States to avoid taking decisions that limit the opportunity of other States to realize their right to health. It also obstructs access to vaccines by those who need it most in least developed countries.<sup>21</sup> The secret nature of certain deals is also contrary to the duty of States to establish transparent mechanisms that allow accountability, public scrutiny of and citizen participation in decisions concerning the

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<sup>15</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), “Statement by UN Human Rights Experts: Universal access to vaccines is essential for prevention and containment of COVID-19 around the world”, press statement, 9 November 2020.

<sup>16</sup> Committee on Economic, Social and Cultural Rights, general comment No. 24 (2017), para. 5. See Guiding Principles on Business and Human Rights, principle 11.

<sup>17</sup> Committee on Economic, Social and Cultural Rights, general comment No. 24 (2017), para. 11.

<sup>18</sup> *Ibid.*, paras. 26 and 28.

<sup>19</sup> See International Covenant on Economic, Social and Cultural Rights, art. 2 (1).

<sup>20</sup> See Committee on Economic, Social and Cultural Rights, general comment No. 25 (2020), para. 82.

<sup>21</sup> See *ibid.*, general comment No. 24 (2017).

allocation of resources and the application of technologies for the realization of the right to health.<sup>22</sup>

11. Instead of pursuing health isolationism and a race for a vaccine, States should honour their obligations to contribute to the enjoyment of all human rights, including the right to health, globally.<sup>23</sup> The distribution of vaccines and the prioritization of access to them should be organized and supported by international cooperation and assistance, which includes the sharing of benefits of scientific progress and its applications.<sup>24</sup> States parties should therefore develop strategies and mechanisms for a fair distribution of the financial costs associated with research into and the production and distribution of vaccines for COVID-19, including through a reduction in the debt burden for countries that need it. They should also adopt transparent and participatory mechanisms that ensure that prioritization in the global distribution of vaccines is based – as should be the case also at the national level – on medical needs and public health considerations. Such support can be organized by using the WHO-supported COVAX Global Vaccines Facility.

12. Lastly, while the present statement focuses essentially on equitable and universal access to vaccines for COVID-19, the Committee considers that its main considerations are relevant, *mutatis mutandis*, to the obligations of States to also ensure universal and equitable access to treatment for COVID-19. Furthermore, the Committee reminds States parties that any measures taken to limit economic, social and cultural rights because of the pandemic must comply with the conditions set out in article 4 of the Covenant. In this regard, the Committee recalls its statement of 6 April 2020 on the pandemic and economic, social and cultural rights (E/C.12/2020/1).

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<sup>22</sup> See Committee on Economic, Social and Cultural Rights, general comments No. 25 (2020), para. 55, and No. 14 (2000), para. 55.

<sup>23</sup> See Charter of the United Nations, Arts. 55–56. See also Committee on Economic, Social and Cultural Rights, general comment No. 24 (2017).

<sup>24</sup> See International Covenant on Economic, Social and Cultural Rights, art. 2. See also the commitments made in Sustainable Development Goal 3.