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Committee on Economic, Social and Cultural Rights

Statement on universal affordable vaccination against coronavirus disease (COVID-19), international cooperation and intellectual property

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

1. International scientific cooperation, intensive research and substantive financial support by States have enabled the development of several safe and effective vaccines against coronavirus disease (COVID-19) in record time, without compromising safety, as the protocols and international guidelines in that respect have been followed and the vaccines have been approved by the respective health authorities. However, this immense scientific achievement is not delivering its full potential to control the pandemic and reduce the suffering it has caused owing both to problems of availability, as not enough vaccines have been produced to date, and to the unequal global distribution of the vaccines that have already been produced and those that have been ordered. Most vaccines have been administered in and reserved for developed and high-income countries, whereas vaccination in many least developed and developing countries has not even started. This situation not only represents discrimination in terms of the right to access to vaccination at the global level, but also undermines progress on achieving the Sustainable Development Goals, especially Goal 3 on ensuring healthy lives and promoting well-being for all at all ages, Goal 10 on reducing inequality within and among countries and Goal 17 on strengthening the means of implementation and revitalizing the Global Partnership for Sustainable Development.¹ It also represents a serious threat to global health. If billions of persons are not vaccinated speedily, contagion by severe acute respiratory syndrome coronavirus 2 (SARS-COV-2) will continue and more people will die. The slow and inequitable distribution of vaccines reportedly also increases the likelihood of additional new mutations of the virus occurring, which increases the risk of new variants emerging that are more easily transmissible, more lethal and against which current vaccines might be less effective.²

2. The discrepancy between the enormous potential of vaccines to improve global health and their limited and unequal positive impact to date has led the Committee to adopt the present statement. It builds on its previous statements on COVID-19,³ in order to remind States of their obligations under the Covenant in relation to universal access and affordability

* Adopted by the Committee intersessionally on 12 March 2021.

¹ See General Assembly resolution 70/1 on transforming our world: the 2030 Agenda for Sustainable Development. See also Obiora C. Okafor, Independent Expert on human rights and international solidarity, "UN expert says global coordination and more equitable sharing of COVID-19 vaccines key to recovery", 22 January 2021.

² Lynn Eaton, "Covid-19: WHO warns against 'vaccine nationalism' or face further virus mutations", *The BMJ*, vol. 372, No. 292 (1 February 2021).

³ See the Committee's statements of 6 April 2020 on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights (E/C.12/2020/1) and of 27 November 2020 on universal and equitable access to vaccines for the coronavirus disease (COVID-19) (E/C.12/2020/2).



of vaccines against COVID-19, particularly with regard to international cooperation and intellectual property.

3. Access to a vaccine against COVID-19 that is safe, effective and based on the best scientific developments is an essential component of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health⁴ and the right of everyone to enjoy the benefits of scientific progress and its applications.⁵ States therefore have an obligation to take all the necessary measures, as a matter of priority and to the maximum of their available resources, to guarantee all persons access to vaccines against COVID-19, without any discrimination.⁶ This obligation needs to be implemented nationally, and at the same time, it also has an international dimension, as many States worldwide do not produce vaccines themselves. States therefore have a duty of international cooperation and assistance to ensure access to vaccines against COVID-19 wherever needed, including by using their voting rights as members of different international institutions and organizations and of regional integration organizations such as the European Union.⁷ All those international organizations should also contribute to the achievement of universal and equitable access to vaccines and refrain from taking measures that obstruct this goal. Thus, States must strengthen their international cooperation to guarantee, as soon as possible, affordable vaccines against COVID-19 globally, including for developing and least developed countries.

4. The Committee regrets the current unhealthy race among States for COVID-19 vaccines, which has created a sort of temporary monopoly by some developed States of the first vaccines to be produced, particularly in 2021, a crucial year in terms of vaccination efforts, because the production capacity currently available is already sold out through public procurement by such States. Given the global nature of the pandemic, States have the obligation to support, to the maximum of their available resources, efforts to make vaccines available globally. 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 thus to implement their human rights obligations relating to the right to health, as it results in a shortage of vaccines for those who are most in need in the least developed countries.

5. The Committee reiterates that instead of this health isolationism, States must honour their obligations to contribute to the enjoyment of all human rights, including the right to health, globally.⁸ The production and distribution of vaccines must be organized and supported by international cooperation and assistance, which includes sharing the benefits of scientific progress and its applications.⁹ States parties should develop strategies and mechanisms to ensure sufficient production and equitable global distribution of vaccines against COVID-19. Prioritization in the global, and indeed the national, distribution of vaccines should be based on medical needs and public health considerations. In that context, the Committee welcomes the statements and proposals made by different States with the aim of ensuring universal and equitable access to COVID-19 vaccination.¹⁰

⁴ International Covenant on Economic, Social and Cultural Rights, art. 12, and Universal Declaration of Human Rights, art. 25.

⁵ International Covenant on Economic, Social and Cultural Rights, art. 15, and Universal Declaration of Human Rights, art. 27.

⁶ International Covenant on Economic, Social and Cultural Rights, arts. 2, 12 and 15.

⁷ Committee on Economic, Social and Cultural Rights, statement on public debt, austerity measures and the International Covenant on Economic, Social and Cultural Rights (E/C.12/2016/1), para. 9.

⁸ Charter of the United Nations, arts. 55–56. See also 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.

⁹ International Covenant on Economic, Social and Cultural Rights, art. 2. See also Sustainable Development Goal 3.

¹⁰ See, for instance, the solidarity call to action to realize equitable global access to COVID-19 health technologies through pooling of knowledge, intellectual property and data, signed by the Director-General of the World Health Organization and the President of Costa Rica, and endorsed by 40 States (www.who.int/initiatives/covid-19-technology-access-pool/endorsements-of-the-solidarity-call-to-action). See also the communication from India and South Africa on the waiver from certain provisions of the TRIPS Agreement for the prevention, containment and treatment of COVID-19

6. In particular, the Committee urges all States, especially the most developed ones and those where the vaccines are produced, to provide all the necessary financial and technical support to strengthen the COVID-19 Vaccine Global Access (COVAX) Facility for more equitable distribution of vaccines. However, this mechanism does not solve the problem of insufficient production of vaccines. Therefore, other measures are urgent and necessary, particularly with regard to intellectual property, in order to achieve, as expeditiously as is technically possible, universal access to vaccines.

7. Most of the vaccines approved are subject to an intellectual property rights regime. It is fair that the private business entities or public research institutions that created the vaccines, albeit with huge financial support from public funds, receive reasonable compensation for their investments and research. However, the Committee recalls that intellectual property rights are not a human right, but a social product, having a social function. Consequently, States parties have a duty to prevent intellectual property and patent legal regimes from undermining the enjoyment of economic, social and cultural rights.¹¹ As stated in the World Trade Organization Declaration on the TRIPS [Trade-Related Aspects of Intellectual Property Rights] Agreement and Public Health (2001), the intellectual property regime should be interpreted and implemented in a manner supportive of the duty of States “to protect public health”.¹²

8. Business entities, including pharmaceutical companies, have the obligation, at a minimum, to respect Covenant rights;¹³ they have specific responsibilities regarding the realization of the right to health, including in relation to access to medicines and vaccines.¹⁴ In particular, pharmaceutical companies, including innovator, generic and biotechnology companies, have human rights responsibilities with regard to access to medicines, comprising active pharmaceutical ingredients, diagnostic tools, vaccines, biopharmaceuticals and other related health-care technologies.¹⁵ Thus, business entities should also refrain from invoking intellectual property rights in a manner that is inconsistent with the right of every person to access a safe and effective vaccine against COVID-19 or the right of States to exercise the flexibilities of the TRIPS Agreement.¹⁶

9. States parties have the international obligation to respect the enjoyment of the right to health in other countries, and to prevent third parties, including business entities, from violating the right to health in other countries if they are able to influence the third parties by way of legal or political means, in accordance with the Charter of the United Nations and applicable international law. Depending on the availability of resources, States should facilitate access to essential health facilities, goods and services, including vaccines, in other countries, wherever possible and provide the necessary aid when required.¹⁷ In addition, States parties have an extraterritorial obligation to take the necessary measures to ensure that business entities domiciled in their territory and/or under their jurisdiction do not violate economic, social and cultural rights abroad.¹⁸ Therefore, States should take all necessary measures to ensure that such business entities do not invoke intellectual property law, either

(IP/C/W/669), and the statement made by the President of the Russian Federation to the General Assembly on 22 September 2020 on the need to use all the capacities of the global pharmaceutical industry in order to provide free access to vaccinations for citizens of all States in the foreseeable future. Available at <https://news.un.org/en/story/2020/09/1073152>.

¹¹ Committee on Economic, Social and Cultural Rights, general comment No. 17 (2005) on the right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author, paras. 1–2 and 35.

¹² Committee on Economic, Social and Cultural Rights, general comment No. 25 (2020) on science and economic, social and cultural rights, para. 69.

¹³ Committee on Economic, Social and Cultural Rights, general comment No. 24 (2017), para. 5. See also United Nations Guiding Principles on Business and Human Rights, principle 11.

¹⁴ Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000) on the right to the highest attainable standard of health, para. 42.

¹⁵ See Human Rights Guidelines for Pharmaceutical Companies in relation to Access to Medicines (A/63/263, annex).

¹⁶ *Ibid.*, guidelines 26–28.

¹⁷ Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000), para. 39.

¹⁸ Committee on Economic, Social and Cultural Rights, general comment No. 24 (2017), paras. 26 and 28.

in their own territory or abroad, in a manner that is inconsistent with the right of every person to access a safe and effective vaccine against COVID-19.

10. In that context, States parties should, when necessary, use all the flexibilities of the TRIPS Agreement, such as compulsory licences, to scale up production and ensure availability and access to all to a safe and effective vaccine against COVID-19. However, the flexibilities of the TRIPS Agreement have thus far proven insufficient to guarantee enough vaccines and equitable distribution of them, especially in developing countries. In particular, the flexibilities operate on a case-by-case basis, through decisions taken by specific countries in relation to specific products and with legal requirements that are not appropriate for such an exceptional health crisis as the one created by this pandemic. For instance, under the TRIPS Agreement, the application for and granting of a compulsory licence is a complex process that must meet several requirements, such as ensuring that an application is made for each patent-protected product and that, once granted, the compulsory licence is used predominantly to supply domestic markets. In the context of the pandemic, those requirements severely limit the swift international cooperation that is needed, as they hinder the capacity of countries that are able to produce vaccines to export them to countries in need. This also explains why some countries and business entities with the technical capacity to produce the vaccines that have already been approved have refrained from doing so, as they are concerned that they would be subjected to litigation for breach of patents. Companies that have invented vaccines should also be supported in providing the technology transfer needed to increase production in other countries and production sites.

11. The current restrictions imposed by the intellectual property rules in the TRIPS Agreement make it very difficult to achieve the international cooperation needed for the massive scale up in production and distribution of vaccines to the levels that are now technically possible and urgently required to achieve herd immunity as soon as possible. That is imperative in order to avoid millions of preventable deaths, overcome the economic and social disruptions created by the pandemic and reduce the risks of dangerous mutations of the virus.

12. The insufficient supply of vaccines and their deeply unequal global distribution necessitate urgent additional measures to be taken in relation to the intellectual property regime. In that context, some States have proposed that the World Trade Organization (WTO) place a temporary waiver on some of the provisions of the TRIPS Agreement for vaccines against and treatment for COVID-19, at least until global herd immunity for COVID-19 is achieved and the pandemic is considered to be under control.¹⁹ This proposal has been supported by a number of special procedure mandate holders of the Human Rights Council, the Expert Mechanism on the Right to Development,²⁰ the World Health Organization (WHO),²¹ a growing number of States and an increasing number of scientific and humanitarian organizations.

13. The current exceptional circumstances created by the pandemic are a strong reminder of the paramount importance of the obligation of all States, under the Charter of the United Nations, to contribute to the enjoyment of all human rights including the right to health, globally,²² and of the obligation of States parties to cooperate internationally for the full enjoyment of economic, social and cultural rights. In that context, States should bear in mind that there is the technical possibility of scaling up production and distribution of vaccines to achieve swift universal affordability and accessibility for vaccination against COVID-19.

¹⁹ See the statement delivered by South Africa at the WTO TRIPS Council, 30 July 2020. Available at www.keionline.org/33593.

²⁰ See “COVID-19: UN experts urge WTO cooperation on vaccines to protect global public health”, 1 March 2021. Available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26817&LangID=E. See also statement by United Nations human rights experts, “Universal access to vaccines is essential for prevention and containment of COVID-19 around the world”, 9 November 2020. Available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26484&LangID=E.

²¹ See Tedros Adhanom Ghebreyesus, “A ‘me first’ approach to vaccination won’t defeat Covid”, *The Guardian*, 5 March 2021.

²² Charter of the United Nations, arts. 55–56. See also Committee on Economic, Social and Cultural Rights, general comment No. 24 (2017).

The most important goal is to prevent deaths and be able to respond to the pandemic as soon as possible. Voluntary sharing, transparent, non-exclusive and public-health driven licensing and technology transfer agreements will promote competition and scale up manufacturing for vaccines. All mechanisms, including voluntary licensing, technology pools, use of TRIPS flexibilities and waivers of certain intellectual property provisions or market exclusivities should be explored carefully and utilized. All these different initiatives have different characteristics and could be implemented in different and complementary ways as there are also existing challenges for the implementation of each of them. That is why they should be explored simultaneously according to the different needs of countries and their ability to implement them at the national and international levels. Thus, the waiver of certain provisions of the TRIPS Agreement is an essential element of these complementary strategies. Besides, failing to approve the temporary waiver of TRIPS Agreement provisions for equitable and affordable access to medical technologies, including COVID-19 vaccines, will also stand in the way of global economic recovery, which is necessary in order to overcome the negative impact of the pandemic on the enjoyment of all economic, social and cultural rights. In that context, the Committee strongly recommends that States support the proposals of this temporary waiver, including by using their voting rights within WTO.

14. Lastly, while the focus of this statement is essentially on equitable and universal access to vaccines against COVID-19, the Committee considers that its main considerations are relevant, *mutatis mutandis*, in relation to the obligations of States to also ensure universal and equitable access to treatment for COVID-19. The Committee will continue to research and monitor the impact of the COVID-19 pandemic on economic, social and cultural rights, in particular in relation to the right to health, through the fulfilment of its various mandates under the Covenant.
