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Committee on Economic, Social and Cultural Rights

Statement on universal and equitable access to vaccines for 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 COVID-19, while allowing, at the same time, a 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 effects which 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 effectiveness¹. 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 the access to vaccines for COVID-19².

2. Every person has a right to the enjoyment of the highest attainable standard of physical and mental health³, which includes access to “immunization programs against the major infectious diseases”⁴. Every person also has a right to enjoy the benefits of scientific progress⁵, which includes access to “all the best available applications of scientific progress necessary to enjoy the highest attainable standard of health”⁶. Both rights imply that every person has a right to access a vaccine for COVID-19, which is safe, effective and based on the application of the best scientific developments.

3. States have an obligation to take all the necessary measures, to the maximum available resources, to guarantee access to vaccines for COVID-19 to all persons, without any discrimination⁷. 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

* The present statement was adopted by the Committee on 27 November 2020.

¹ <https://www.who.int/publications/m/item/relevant-who-tech-docs-for-covid-19-vaccines-and-other-biologicals>

² For a general view of the obligations of State parties under the Covenant in relation to the pandemic, see the Statement of the Committee on 17 April 2020 “On the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights”

³ See article 12 of the International Covenant on Economic, Social and Cultural Rights and article 25 of the Universal Declaration of Human Rights

⁴ See Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000) on the Right to the Highest Attainable Standard of Health. Paragraph 36.

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

⁶ See Committee on Economic, Social and Cultural Rights, General Comment No. 25 (2020) on Science and Economic, Social and Cultural Rights, Paragraph 70

⁷ See articles 2, 12 and 15 of the International Covenant on Economic, Social and Cultural Rights

health⁸. Thus, under the current conditions, States have 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.⁹ 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 vaccines for COVID-19, States must¹⁰: firstly, remove any discrimination based on grounds such as religion, national origin, sex, sexual orientation and gender identity, race and ethnic identity, age, disability, undocumented migration status, social origin, poverty and 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 through 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; fourthly, guarantee access to relevant information especially through the dissemination of accurate scientific information on safety and effectiveness of different vaccines and public campaigns protecting people against false, misleading or pseudoscience information concerning vaccines¹¹, which is rapidly spreading on internet sites and social media.

5. It is impossible to guarantee that everyone has 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. Prioritization of the 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,¹² 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 SARS-COV-2 due 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 marginalised and disadvantaged populations.. In any case, these criteria of prioritization must be established through a process of adequate public consultation, be transparent and subject to public scrutiny and, in the case of disputes arising, to judicial review to avoid discrimination.

6. Many of the vaccines which might be approved have been developed by private companies and may be subject to the regime of intellectual property. These companies expect to obtain a profit and it is fair that they receive reasonable compensation for their investments and research. However, the Committee reminds State parties that intellectual property is not a human right, but a social product, having a social function¹³. Consequently, States parties have a duty to prevent intellectual property and patent legal regimes from undermining the enjoyment of economic, social and cultural rights through, for example, making critical public goods such as vaccines or medicines inaccessible to developing countries or

⁸ See Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000) on the Right to the Highest Attainable Standard of Health. Paragraph 44.

⁹ See Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000) on the Right to the Highest Attainable Standard of Health. Paragraph 12

¹⁰ See Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000) on the Right to the Highest Attainable Standard of Health. Paragraph 12

¹¹ See Committee on Economic, Social and Cultural Rights, General Comment No. 25 (2020) on Science and Economic, Social and Cultural Rights, Paragraph 52

¹² See articles 2 of the International Covenant on Economic, Social and Cultural Rights. See Committee on Economic, Social and Cultural Rights, General Comment No. 20 (2009) “Non discrimination in Economic, Social and Cultural Rights”.

¹³ See Committee on Economic, Social and Cultural Rights, General Comment No. 17 (2006) “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”. Paragraphs 1 and 2

impoverished communities due to unreasonable cost structures¹⁴. Thus, as stated in the World Trade Organization Doha Declaration on the Trade-Related Aspects of Intellectual Property Rights Agreement TRIPS 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”¹⁵. 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. However, these flexibilities will in all likelihood be insufficient to face adequately the pandemic, especially in developing countries. Thus, as an additional measure, some States have proposed to the WTO¹⁶ to waive some of the provisions of the TRIPS agreement in the context of this global health crisis. This proposal, supported by a number of special procedures in the UN-Human Rights system¹⁷ should be considered and implemented in order to facilitate the prevention, containment and treatment of COVID-19, through the global affordability of vaccines.

7. In line with international standards, business entities, including pharmaceutical companies, have the obligation, as a minimum, to respect Covenant rights.¹⁸ Thus, business entities should 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 for COVID-19 and with the obligation of States to guarantee, as expeditiously as possible, universal equitable access to vaccines for COVID-19.

8. Under the Covenant, States parties may be held directly responsible for the action or inaction of business entities under certain circumstances¹⁹. In addition, they have an extraterritorial obligation to take the necessary measures to protect economic, social and cultural rights by taking the necessary measures to ensure that corporations domiciled in their territory and/or under its jurisdiction do not violate these rights abroad.²⁰ Thus, States should take all necessary measures to ensure that such business entities do not invoke intellectual property law, either in their own territory or abroad, in a manner inconsistent with the right of every person to access 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.²¹ The pandemic nature of COVID-19 reinforces this obligation of States.²² Thus, States must strengthen their international cooperation to guarantee, as soon as possible, universal and equitable access to vaccines for COVID-19 globally, including for the populations of the 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 some priority to ensure access to vaccines for their own citizens first. However, this reasonable concern should not lead to a form of health

¹⁴. See Committee on Economic, Social and Cultural Rights, General Comment No. 17 (2006) “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”. Paragraph. 35

¹⁵ See Committee on Economic, Social and Cultural Rights, General Comment No. 25 (2020) on Science and Economic, Social and Cultural Rights, Paragraph 69

¹⁶. See South Africa’s statement at the WTO TRIPS Council, July 30, 2020, <https://www.keonilne.org/33593>

¹⁷. Statement by a group of Special Procedures on universal access to the vaccine: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26484&LangID=E>

¹⁸ See 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” Paragraph 5 and United Nations Guiding Principles on Business and Human Rights: principle 11

¹⁹ See 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” Paragraph 11.

²⁰ See 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” Paragraphs 26 and 28

²¹ See article 2.1. of the International Covenant on Economic, Social and Cultural Rights

²² See Committee on Economic, Social and Cultural Rights, General Comment No. 25 (2020) on Science and Economic, Social and Cultural Rights, Paragraph 82

isolationism or to a race for COVID-19 vaccines among States, in which some States, especially developed States, compete with other States 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 increase the prices of vaccines and might even create a temporary monopoly of access of 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 to their population. This competition among States for vaccines is counterproductive in terms of a global health approach, as it makes it much more difficult and lengthy to control the pandemic. 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 risks of upsurges of the pandemic remain. Besides, this competition for vaccine is contrary to the extraterritorial obligations of States to avoid taking decisions that limit the opportunity of other states to implement their right to health. It also results in obstructing access to vaccines by those who need it more in the least developed countries.²³ The secret nature of some of these deals is also contrary to the duty of States to establish transparent mechanisms that allow accountability, public scrutiny and citizen participation in its decisions concerning the allocation of resources and the application of technologies for the realization of the right to health²⁴.

11. Instead of health isolationism and race for vaccine, States must honor their obligations to contribute to the enjoyment of all human rights including the right to health, globally.²⁵ Distribution of vaccines and prioritization of access to them must be organized and supported by international cooperation and assistance, which includes the sharing of benefits of scientific progress and its applications.²⁶ Thus, State parties should develop strategies and mechanisms for a fair distribution of the financial costs associated with the research, production and distribution of vaccines for COVID-19, including the reduction of the debt burden for those countries which 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. Finally, while this statement is essentially on equitable and universal access to vaccines for 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. Besides, the Committee reminds State parties that any measures adopted 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 from April 2020 “Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights”.²⁷

²³ See 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”.

²⁴ See Committee on Economic, Social and Cultural Rights, General Comment No. 25 (2020) on Science and Economic, Social and Cultural Rights, Paragraph 55. See also See Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000) on the Right to the Highest Attainable Standard of Health. Paragraph 55

²⁵ See United Nations Charter, articles 55 and 56. See also See 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”.

²⁶ See articles 2 of the International Covenant on Economic, Social and Cultural Rights .See also the commitment made in the sustainable development goals (SDG 3)

²⁷ <https://undocs.org/E/C.12/2020/1>