

13 June 2022

Open Letter from the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to the World Trade Organization's Twelfth Ministerial Conference

Delegates,

I have the honour to address you in my capacity as the United Nations Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. I write on the occasion of the World Trade Organization's Twelfth Ministerial Conference, namely, the Conference's consideration of a waiver of certain provisions of the TRIPS Agreement for the prevention, containment and treatment of COVID-19.

As an independent expert appointed by the United Nations Human Rights Council to monitor and report on contemporary manifestations of racism and racial discrimination, I have closely monitored the global racial inequities exposed and exacerbated by the COVID-19 pandemic. The pandemic has had disproportionate impacts on Africans and people of African descent, Asians and people of Asian descent, indigenous peoples, stateless persons, migrant workers, women, people discriminated against on the basis of their sexual orientation, gender identity or sex characteristics, persons with disabilities and many other marginalized groups. I share the conclusion, articulated by several other international human rights experts,¹ that unequal access to COVID-19 prevention, containment and treatment technologies ("COVID-19 technologies") violates the fundamental human rights principles of equality and non-discrimination.

International trade law, including international intellectual property law, perpetuates racial discrimination in access to lifesaving COVID-19 vaccines and medicines. Urgent action is required to remove these legal obstacles to equality and non-discrimination. I thus urge you to immediately use all tools available to you to rectify transnational inequities in access to COVID-19 vaccines, treatments and other technologies. This includes adopting a comprehensive TRIPS waiver under the terms prominently proposed by certain WTO Members and civil society. International human rights law requires the prohibition of racial discrimination as a matter of both treaty-based and customary international law. Under these obligations, shared by all WTO Members, the organization must be attuned to the current unequal distribution of life-saving COVID-19 technologies, which disproportionately affects the world's racially marginalized peoples.

¹ See "States must prioritize health and equality over profits and vaccine hoarding, UN experts say", 29 November 2021; "Statement by UN Human Rights Experts Universal access to vaccines is essential for prevention and containment of COVID-19 around the world", 9 November 2020; Tlaleng Mofokeng, "UN expert strives to make right to health a reality for all", 23 June 2021.

Unequal access to COVID-19 vaccines and other COVID-19 technologies within and across nations is undeniably an issue of racial injustice. Racism, racial discrimination, xenophobia and related intolerance operate through both: (1) differential treatment of and outcomes for individuals and groups on the grounds of their race, colour, descent, national or ethnic origin; and (2) differential treatment of and outcomes for countries and territories that were subject to prolonged exploitation and degradation during the colonial era on the basis of racist theories and beliefs.²

The Committee on the Elimination of Racial Discrimination (“CERD”) has highlighted how the disproportionate impact of COVID-19 between and within countries reproduces colonial hierarchies and represents the international community’s failure “to redress the effects of racism rooted in slavery, colonialism and apartheid.”³ Certain “developed” nations and powerful transnational corporations based within their jurisdictions have monopolized authority to determine “who is worth saving” — and this hierarchical power cannot be unlinked from its colonial origins. Researchers have observed that “[t]he map of winners and losers in the COVID-19 vaccination race appears almost indistinguishable from the map of European colonialism”.⁴ Additionally, the relative financial burden of reaching the target vaccination rate of 70 per cent has been as large as 71 times higher for low income countries compared to high income countries.⁵ The uneven multilateral playing field has thus generated a “two-track pandemic”,⁶ in which certain countries are “plunged into multiple interlinked emergencies – a debt crisis, a development crisis and a human rights crisis.”⁷ The term “vaccine apartheid” aptly describes the regime that has been in place for much of the pandemic.

In addition to curtailed access to COVID-19 vaccines, intellectual property barriers have limited the supply of COVID-19 diagnostic technologies and therapeutic treatments. Monopolies over the creation and supply of COVID-19 technologies have exacerbated shortages for low-income nations, with States in a position to materially transform the situation failing to do so.

CERD’s April 2022 statement, issued under its Early Warning and Urgent Action Procedure, provides a comprehensive account of racially discriminatory COVID-19 outcomes within and between States. But CERD is not alone in identifying the unjust nature of the current COVID-19 *status quo*. In fact, there is broad consensus throughout the United Nations system that the current approach is untenable from a legal and moral perspective. This consensus is captured in the findings and statements of, among others, various Human Rights Council Special Procedures mandate holders,⁸ Tedros Adhanom

² I have made this point in several reports to the United Nations Human Rights Council and General Assembly. See, e.g., A/HRC/41/54.

³ Committee on the Elimination of Racial Discrimination, “Statement on the lack of equitable and non-discriminatory access to COVID-19 vaccines”, statement at the 106th session of CERD (April 2022).

⁴ Tammam Aloudat, Dena Arjan Kirpalani and Meg Davis, “Decolonisation and Global Health”, Geneva Graduate Institute, October 2021.

⁵ UNDP, Global Dashboard for Vaccine Equity. Available at <https://data.undp.org/vaccine-equity/>

⁶ Tedros Adhanom Ghebreyesus, Director-General of the World Health Organization, media briefing on COVID-19, Geneva, 7 June 2021.

⁷ Michelle Bachelet, United Nations High Commissioner for Human Rights, statement to the 49th session of the Human Rights Council, Geneva, 11 March 2022.

⁸ See, for example, the statements included in footnote 1.



Ghebreyesus, the Director-General of the World Health Organization,⁹ Michelle Bachelet, UN High Commissioner for Human Rights,¹⁰ Winnie Byanyima, UN Undersecretary-General and Executive Director of UNAIDS,¹¹ and UN Secretary-General António Guterres.¹²

I am aware that certain Members have opposed the proposal by India and South Africa in October 2020 (revised May 2021) temporarily to waive intellectual property protections under TRIPS for healthcare technologies involving COVID “prevention, containment or treatment”. News reports have emerged that a compromise reached in March 2022 is geographically limited and only covers vaccine production. The former UN Secretary-General Ban Ki-Moon has gone so far as to identify the proposed text as inadequate, calling it a “half measure”.¹³

Racial injustice is a defining challenge of our times. Systemic racial discrimination is embedded into transnational legal, economic and political structures, including the international intellectual property regime. These systems uphold racial inequality by constraining the possible solutions for challenging such inequality. In the context of the COVID-19 pandemic, this has meant that the burdens of the pandemic have been borne disproportionately by certain States, peoples and territories most harmed by colonialism and racism, while the mechanisms for reducing these burdens are controlled almost entirely by States, peoples and territories which were the beneficiaries of colonialism.

In the face of this monumental challenge and deeply entrenched historical inequality, half-measures and weak compromises are not enough. It is notable that many of the WTO Members now resisting a full TRIPS waiver were on the forefront of denouncing systemic racial discrimination in the aftermath of the 2020 racial justice uprisings. At that time, they called for the cooperation of all nations and all peoples in eradicating racial inequality and systemic racism. Delegates, I urge you to honor those commitments and the legal obligations for equality and non-discrimination enshrined in international human rights law. It is my hope that you will demonstrate, through your actions at this Twelfth Ministerial Conference, the political willpower, leadership and firm commitment to racial equality that transformative change requires.

If I can offer any clarification on the above, or if I can be of further assistance on any issues related to my mandate, please do not hesitate to contact me through the Office of the High Commissioner for Human Rights (Ms. Eleanor Robb, eleanor.rob主@un.org).

Please accept, distinguished Delegates, the assurances of my highest regard.

⁹ Tedros Adhanom Ghebreyesus, Director-General of the World Health Organization, media briefing on COVID-19, Geneva, 7 June 2021.

¹⁰ Michelle Bachelet, United Nations High Commissioner for Human Rights, statement to the 49th session of the Human Rights Council, Geneva, 11 March 2022.

¹¹ “UN Undersecretary-General Says Failure to Share COVID-19 Vaccines with Global South ‘Is Racism’”, *World Economic Forum*, 25 May 2022.

¹² António Guterres, Secretary-General of the United Nations, video remarks to the high-level thematic debate on “Galvanizing Momentum for Universal Vaccination”, in New York, 25 February 2022.

¹³ Ban Ki-Moon, “India, South Africa must not accept half-measures by the West when lives are on line during Covid-19 pandemic”, *The Times of India*, 24 March 2022.



T. Achiume

E. Tendayi Achiume
Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination,
Xenophobia and Related Intolerance