## **Input to the High Commissioner’s report on human rights implications of and good practices and key challenges of equitable and universal access to and distribution of COVID-19 vaccines[[1]](#footnote-1)**October 3rd 2022

**Inequitable access to COVID-19 vaccines and other healthcare technologies as a human rights problem**

COVID-19 has so far claimed over [6 million lives](https://coronavirus.jhu.edu/map.html) and generated enormous compounding crises in terms of [standards of living](https://www.pewresearch.org/global/wp-content/uploads/sites/2/2021/03/PG_2021.03.18_Global-Middle-Class_FINAL.pdf), [gender justice](https://dawnnet.org/2021/10/feminists-for-a-peoples-vaccine-oral-statement-sweden-review-181021/), [care](https://oxfamilibrary.openrepository.com/bitstream/handle/10546/621009/bp-care-crisis-time-for-global-reevaluation-care-250620-en.pdf;jsessionid=FD48040185AB2776391EFDC7B1A5D5BB?sequence=13) [work](https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2020/Policy-brief-COVID-19-and-the-care-economy-en.pdf), [access to](https://www.ohchr.org/sites/default/files/Documents/Issues/Education/A_HRC_44_39_AdvanceUneditedVersion.docx) [education](https://www.un.org/development/desa/dspd/wp-content/uploads/sites/22/2020/08/sg_policy_brief_covid-19_and_education_august_2020.pdf), and many other intersecting areas of society. A devastating pandemic by any measure, it is the inequitable social distribution of the COVID-19 virus’ myriad and often preventable harms that may become its deepest legacy. Left unremedied, these injustices will continue to reverberate and set a dire precedent for all global crises.

A human rights-based global response to COVID-19 continues to be vital as the pandemic persists and as new public health emergencies arise. Such a response requires that the global community take all necessary steps to ensure just access to life-sustaining healthcare and to comprehensively remedy those most harmed by the human rights violations arising from the pandemic over the past 2.5 years. These steps include accountability, reparations, and measures to ensure non-repetition. [Corporate capture-driven intellectual property impediments to equitable access to healthcare are long standing systemic ills](https://policy-practice.oxfam.org/resources/corporate-wealth-or-public-health-wtotrips-flexibilities-and-access-to-hivaids-130849/), [as demonstrated recently in relation to HIV/AIDS](https://www.unaids.org/sites/default/files/media_asset/JC2049_PolicyBrief_TRIPS_en_1.pdf). Left untouched, global economic policies undermining public healthcare, or [gutting it through debt and austerity](https://oxfamilibrary.openrepository.com/bitstream/handle/10546/621210/bp-covid-loans-imf-austerity-110821-en.pdf?sequence=1), will doubtlessly continue to violate human rights. A human rights reckoning with the pandemic must be commensurate with the scale of suffering, endured disproportionately by those at intersecting lines of structural discrimination based on race, gender, class, ethnicity, disability, and colonial pasts, among others. To fall short would be to condone States’ vast failures to comply with the human rights to equality, life, health, personal integrity, enjoyment of the benefits of scientific progress and their duties of international cooperation and solidarity.

The United Nations (UN) Human Rights Council Resolution 49/25 concerns an issue at the heart of these failures: “equitable, affordable, timely and universal access for all countries to vaccines,” the devastating absence of which has been termed “vaccine apartheid” by the heads of [UN AIDS](https://www.theguardian.com/global-development/2021/jan/29/a-global-vaccine-apartheid-is-unfolding-peoples-lives-must-come-before-profit) and the [World Health Organisation (WHO)](https://www.who.int/director-general/speeches/detail/director-general-s-opening-remarks-at-paris-peace-forum-spring-meeting-17-may-2021), and the [UN Special Rapporteur on Racism](https://www.ohchr.org/sites/default/files/2022-06/2022-06-13-WTO-Open-Letter.pdf), among others. Vaccination is central not only for its vital role in preventing the worst of the pandemic—from deaths to lockdowns—but also for its [profoundly](https://msfaccess.org/covax-broken-promise-world) [unfair](https://peoplesvaccine.org/faq/) [distribution](https://www.nature.com/articles/s41599-022-01073-z). Many shots developed with [substantial public subsidies](https://www.thelancet.com/action/showPdf?pii=S0140-6736%2821%2900306-8) have been indefensibly [tightly controlled](https://webassets.oxfamamerica.org/media/documents/The_Great_Vaccine_Robbery_Policy_Brief.pdf?_gl=1*l45ma5*_ga*MTQ1MDU1MjE4My4xNjY0MzEzNzIz*_ga_R58YETD6XK*MTY2NDMxMzcyMi4xLjAuMTY2NDMxMzcyMi42MC4wLjA.) by private business and [hoarded](https://www.oxfam.org/en/press-releases/g7-vaccines-failures-contribute-600000-preventable-deaths) by the richest States, who resisted meaningful efforts to temporarily [waive intellectual property](https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/IP/C/W669R1.pdf&Open=True) rights on the most effective vaccines to help decentralize and [democratize supply](https://www.msf.org/msf-supports-india-and-south-africa-ask-waive-coronavirus-drug-patent-rights).

As COVID-19 vaccine inequities grew, international human rights bodies gradually called on States and businesses to realize their human rights duties, including the [statements of the](https://www.ohchr.org/en/statements/2021/12/ec1220202-committee-adopts-statement-universal-and-equitable-access-vaccines) [UN Committee on Economic, Social and Cultural Rights](https://www.ohchr.org/en/statements/2021/12/ec1220211-committee-adopts-statement-universal-affordable-vaccination-against), [numerous](https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27156&LangID=E) [Special Procedures](https://www.ohchr.org/en/press-releases/2021/10/information-note-experts-send-pharma-companies-states-eu-and-wto-letters) [mandate holders](https://www.ohchr.org/en/press-releases/2021/11/states-must-prioritize-health-and-equality-over-profits-and-vaccine-hoarding), and the [Committee on the Elimination of Racial Discrimination](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/1_Global/INT_CERD_SWA_9548_E.pdf) (CERD), among others. The pronouncements—many responding to a slew (see annex) of civil society human rights complaints—applied legal standards relating to corporate accountability, extra-territorial obligations, substantive inequality, structural discrimination, and other elements, and strongly upheld vaccine justice as a human rights imperative. These statements stand in stark juxtaposition to [rich States’ vastly insufficient measures](https://msfaccess.org/inability-agree-real-pandemic-intellectual-property-waiver-wto-devastating-global-failure-people)—such as the patents- and vaccines-only measure tardily adopted at the World Trade Organisation in June 2022—and corporate [intellectual property holders’](https://www.escr-net.org/sites/default/files/attachments/_covid_19_vaccines_urgent_appeal_20_april_2021.pdf) [inadequate](https://www.doctorswithoutborders.org/latest/msf-responds-pfizer-and-medicines-patent-pool-license-new-covid-19) and [precarious](https://blog.petrieflom.law.harvard.edu/2022/08/29/no-take-backs-modernas-attempt-to-renege-on-its-vaccine-patent-pledge/) [voluntary pledges](https://www.escr-net.org/sites/default/files/attachments/backgrounder_why_tripswaiver_is_needed_1_0.pdf).

It did not have to be this way. Alternatives to massive vaccine inequities were proposed and available from the beginning of the pandemic. Civil society calls for international cooperation and unencumbered intellectual exchanges to fight the pandemic existed early on, as did international frameworks for cooperation, such as the [Covid-19 Technology Access Pool (C-TAP)](https://www.who.int/initiatives/covid-19-technology-access-pool) established in a [collaboration between the WHO and Costa Rica, among others](https://www.who.int/initiatives/covid-19-technology-access-pool/solidarity-call-to-action), to realize a spirit of [open science](https://www.ohchr.org/sites/default/files/Documents/Press/WebStories/JointAppeal_OpenSciences_EN.pdf) and the then-common calls for vaccines to be treated as global public goods. Indeed, access to medicines [experts identified over 100 firms that had the ability to add to COVID vaccine supply based in regions throughout the world if only they had been allowed access to the restricted inputs and legal rights to do so](https://accessibsa.org/mrna/). Through regulation, intellectual property waivers and technology transfer, rich States could have made these alternatives an effective reality, compelling compliance from intellectual property holders whose home bases they contain. In practice, [neither businesses, nor those States, meaningfully participated](https://www.theguardian.com/world/2021/jan/22/who-platform-for-pharmaceutical-firms-unused-since-pandemic-began) in these endeavors ([or did so very belatedly](https://www.who.int/initiatives/covid-19-technology-access-pool/us-nih-licenses)).

**We maintain that states, who also harbor the headquarters of some of the** [**major**](https://www.nature.com/articles/d41586-020-02450-x) **COVID-19 vaccine and therapeutics producers, should be held accountable for the violations of their extraterritorial obligations and ordered to remedy these.** The extraterritorial nature of the problems described in this request usually lead to protection gaps that international human rights mechanisms should pay special attention to, using all of their available tools to address. According to the [Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights](https://www.fidh.org/IMG/pdf/maastricht-eto-principles-uk_web.pdf), these gaps have become more severe in the context of globalization, in particular the ineffective application of human rights law to investment and trade laws, policies and disputes and the lack of human rights regulation and accountability of transnational corporations. In that regard, the Principles recommend that States assume extraterritorial obligations to regulate globalization and ensure universal protection of all peoples and groups.

**The disproportionate impact of the pandemic on racialized communities**

In August 2020, [CERD stated](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/1_Global/INT_CERD_SWA_9234_E.pdf) that, all over the globe, persons belonging to minorities and marginalized groups are more vulnerable to the pandemic due to a greater exposure to the virus because of often inadequate or particular living conditions (crowded urban settlements or remote communities), limited or no access to clean water and sanitation facilities, limited or no access to healthcare, medication, medical services, social security and social services which as a result can lead to higher rates of infection and mortality. Groups that are subject to racial discrimination are furthermore disproportionately affected by the overall negative impact of the COVID-19 pandemic on health services in general, with health issues not directly related to the COVID-19 disease being left unattended. The Committee also stated that the pandemic exposes and further deepens structural inequalities affecting vulnerable groups protected under the Convention, based on entrenched structures and practices of discrimination and exclusion.

On 28 March 2022, a consortium of organizations from the global north and global south working collaboratively for human rights, including those preparing this report, submitted a petition (updated from the original submitted on 25 October 2021) through the Early Warning and Urgent Action procedure of CERD. The petition (see annex) cited evidence that the impact of the coronavirus pandemic has been disproportionately greater on racialized communities, including Afro-descendant people, Indigenous Peoples, migrant workers, and women in their diversity, among others.

In view of this, we petitioned CERD to act urgently in advance of the June 2022 WTO Ministerial Conference to ensure that Germany, Switzerland, the United Kingdom and the United States comply with their obligations under the treaty to eliminate racial discrimination in its direct and indirect forms, and ask that they immediately support, implement, and enforce the Trade-Related Intellectual Property Rights Agreement (TRIPS) waiver at the World Trade Organization, and mandate corresponding technology and knowledge transfers enabling urgent diversification of production/supply, and thus, greater access.

On 29 April 2022, the CERD issued a [Statement](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/1_Global/INT_CERD_SWA_9548_E.pdf) on the basis of our petition, acknowledging the lack of equitable and non-discriminatory access to COVID-19 vaccines and other healthcare technologies, and highlighting the disproportionate impact of the pandemic the groups protected by the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in terms of higher levels of morbidity and mortality, due to a pattern of unequal distribution of vaccines and COVID-19 technologies within and between countries that replicates slavery and colonial-era racial hierarchies. The CERD also reminded Germany, Switzerland, the United Kingdom, and the United States of their obligations under the ICERD to prevent racial discrimination “whether by purpose or effect” both within their borders and extraterritorially, and called on them to support a comprehensive TRIPS waiver on COVID-19 healthcare technologies.

**Disproportionate impact of the pandemic on women**

The behavior of most of the high income countries named above and corporations headquartered within its borders resulted in the prolongation of the pandemic and the disproportionate impact it had and continues to have on the human rights of women. In this section we provide examples of how the pandemic and its prolongation due to the lack of vaccines impacted disproportionately on women worldwide:

According to a [Lancet report](https://www.thelancet.com/action/showPdf?pii=S0140-6736%2821%2901651-2), only 48% and 36% of 199 countries reported sex-disaggregated data on COVID-19 cases and deaths. Consequently, the full extent of the impact of COVID-19 on women has not been accurately measured. However, several preliminary studies have found evidence that women in their diversity have been disproportionately impacted by COVID-19. A study by [UN women](https://data.unwomen.org/resources/surveys-show-covid-19-has-gendered-effects-asia-and-pacific) conducted in the Asia Pacific region found that even though men were more likely to die from COVID-19, women were receiving less information on how to prevent COVID-19, their emotional and mental health was disproportionately affected and, in some countries, women are facing more challenges in accessing medical care. Additionally, women are the majority of frontline health workers: they represent [70% of the global healthcare workforce](https://www.jstor.org/stable/resrep24863?seq=1#metadata_info_tab_contents) while holding just 25% of the senior roles in the profession. They usually have lower-status roles, many of which are underpaid or unpaid.

Maternal and newborn health-care services have become less available, inaccessible or unaffordable for [millions](http://www.healthpolicyplus.com/covid-mnh-impacts.cfm) of women globally as a result of restrictions on movement. According to a [survey carried](https://www.who.int/publications/i/item/WHO-2019-nCoV-EHS_continuity-survey-2020.1) out by the WHO across 105 countries, 68 per cent experienced disruptions in family planning services, as a result of the COVID-19 pandemic. Worldwide it is [estimated](https://www.unfpa.org/press/new-unfpa-data-reveals-nearly-12-million-women-lost-access-contraception-due-disruptions) that twelve million women lost access to contraception, leading to 1.4 million unintended pregnancies. In Africa, a recent [UN Women/UNFPA repor](https://esaro.unfpa.org/sites/default/files/pub-pdf/impact_of_covid-19_on_gender_equality_and_women_empowerment_in_east_and_southern_africa0704202101_1.pdf)t analyzed the impact of COVID on women in the Eastern and Southern Africa region. This report showed that maternal deaths have almost doubled (96% increase) in Kenya, 28% in Botswana and 18% in Mozambique.

[Evidence](https://esaro.unfpa.org/sites/default/files/pub-pdf/impact_of_covid-19_on_gender_equality_and_women_empowerment_in_east_and_southern_africa0704202101_1.pdf) suggests that women suffered more from the economic crisis associated with the pandemic. While women make up 39 percent of global employment they account for 54% of overall [job losses](https://www.mckinsey.com/featured-insights/future-of-work/covid-19-and-gender-equality-countering-the-regressive-effects) during the pandemic. According to the [International Labour Organisation (ILO) and the Economic Commission for Latin America and the Caribbean (ECLAC)](https://www.cepal.org/es/publicaciones/46633-la-autonomia-economica-mujeres-la-recuperacion-sostenible-igualdad), the impact of measures to limit spread of the virus will be higher in highly feminized sectors such as commerce, manufacturing industries, tourism and domestic service.

Women continue to have their workload augmented as they have to take on the care for the children who are not in school, care for the health of members of the family for whom they work and increased standards of hygiene to prevent contagion. According to a [survey](https://womendeliver.org/wp-content/uploads/2021/02/Global_Report_English.pdf) carried out in 17 countries, 48% of female respondents declare their “time doing household work has increased” against 38% of men.

Education is another area where COVID-19 has had a disproportionate impact on women. First, women make the majority of education workers worldwide. They had to respond to new forms of education without the possibility of training or the technological resources to adapt their work to the demands of distance education. According to a study by the [United Nations Education, Scientific and Cultural Organization (UNESCO)](https://unesdoc.unesco.org/ark%3A/48223/pf0000379270), girls were more at risk than boys to see a disruption in their learning due to taking over additional responsibilities in their homes or lack of connectivity.

The pandemic has also contributed to a [“shadow pandemic of violence against women”](https://www.unwomen.org/en/news/in-focus/in-focus-gender-equality-in-covid-19-response/violence-against-women-during-covid-19). A [report](https://oxfamilibrary.openrepository.com/bitstream/handle/10546/621309/bp-ignored-pandemic-251121-en.pdf?sequence=19) shows an undeniable increase in gender-based violence during the COVID-19 pandemic through [analysis](https://oxfamilibrary.openrepository.com/bitstream/handle/10546/621309/mn-ignored-pandemic-methodology-251121-en.pdf?sequence=4&isAllowed=y) of the number of calls made by survivors to domestic violence hotlines in ten countries during the first months of lockdown. There are other preliminary reports of this phenomenon in [Latin America](https://www.cepal.org/sites/default/files/events/files/220222_documento_mapeo_medidas_covid-19_rev_dag_eng.pdf) and [Asia and the Pacific](https://reliefweb.int/sites/reliefweb.int/files/resources/SDD_Policy_Paper_Covid-19-VAW.pdf).

**Recommendations**

We ask the Office of the High Commissioner for Human Rights (OHCHR) to draw attention to:

- States’ conduct leading to structural discrimination in COVID-19 diagnostics, vaccine and treatments manufacturing, access, availability and distribution, emphasizing the long-term harm to the quest to eliminating discrimination against historically discriminated groups protected by international law.

- Recommend States to refrain from making laws and policies which directly or indirectly result in the denial of the rights of the previously mentioned groups, including extraterritorially. This means that they must refrain from supporting policies that restrict access to vaccines, medical products and treatments needed to respond to COVID-19.

- Request States to protect the human rights of all people by urgently engaging in a constructive negotiation of the comprehensive TRIPS waiver originally requested by India and South Africa (revised in May 2021) - including as to treatments and diagnostics, which are crucial to the management of the pandemic - and mandating corresponding technology and knowledge transfers enabling diversification of production facilities and supply and the scaling up of production.

- Encourage States to build a multi-stakeholder process - open to civil society but closed to direct and indirect business lobbyists - held in a forum more specialized towards matters of public health - outside of commercially-oriented forums like the World Trade Organization which give a structural advantage to higher income countries and to corporate capture. As States negotiate a new Pandemic Treaty, they must avoid replicating the mistakes of this pandemic and ensure a human rights-based response. This includes an automatic TRIPS waiver on life-saving technologies once a pandemic is declared, and more robust involvement of public health institutions and civil society in designing the global response.

1. This submission was prepared by: Centro de Estudios Legales y Sociales (CELS), ESCR-Net - International Network for Economic, Social and Cultural Rights, Global Network of Movement Lawyers at Movement Law Lab [↑](#footnote-ref-1)