UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER

COVID-19 RESPONSE

HUMAN RIGHTS AND ACCESS TO COVID-19 VACCINES

OVERVIEW

As of the time of writing, over 73 million people have been infected with SARS-Cov-2, the virus which causes COVID-19, and more than 1.6 million people have died.[1] With some 42 vaccines in human clinical trials and more than 151 in the preclinical stage, the COVID-19 pandemic has driven an extraordinary effort to develop a vaccine.[2] Vaccines are already being distributed in Canada, China, Russia, the United Kingdom and the United States. While these developments represent a real opportunity to change the trajectory of the pandemic, the distribution process still faces significant hurdles, including complex logistical challenges.

Without a global, coordinated effort to ensure access to a vaccine for everyone who needs it, we risk priority access being granted on the basis of ability to pay and other grounds including nationality and country of residence, rather than on an evidence-based assessment of need. Affordable, non-discriminatory access to the vaccine is a human right. Ensuring access to the vaccine is not only the right thing to do, it is in the interest of us all, for unless everyone is safe, no one is safe. Fair distribution of vaccines that respects the human rights of all is also essential to build trust. While recent advances underscore the urgency of respecting human rights in relation to the development and distribution of a COVID-19 vaccine, the norms outlined in these messages apply universally to access to medicines, other vaccines, health therapies and health technologies and should guide States and other stakeholders in policy development and implementation.

KEY MESSAGES

1. COVID-19 vaccines should be treated as global public goods

Health is a right and COVID-19 vaccines should be treated as global public goods, rather than as marketplace commodities available only to those countries and people who can afford to pay the asking price. The availability of vaccines, medicines, health technologies and health therapies is an essential dimension of the right to health, the right to development and the right to enjoy the benefits of scientific progress and its applications. Everyone is entitled, on an equal footing with others, to enjoy access to all the best available applications of scientific progress necessary to enjoy the highest attainable standard of health.[3]

[1] https://covid19.who.int/.

[2] https://www.who.int/docs/default-source/coronaviruse/risk-comms-updates/update37-vaccine-development.pdf?sfvrsn=2581e994_6.

[3] Committee on Economic Social and Cultural Rights (CESCR), General Comment No. 25 (2020) on science and economic, social and cultural rights (article 15 (1) (b), (2), (3) and (4) of the Covenant), para. 70.

2. The COVID-19 pandemic is a global health emergency which demands a global response

Viruses do not respect borders. A well-coordinated global approach to the development and distribution of COVID-19 vaccines based on the solidarity of all nations and peoples is the most effective, sustainable and moral response to the crisis the world is facing. Technology transfer and the sharing of information and data, especially, will be of great importance to ensuring a successful and inclusive global vaccination campaign. This approach should also be the hallmark of all efforts to secure access to treatments and therapies beyond vaccines. In May 2020, OHCHR joined a Solidarity Call to Action, an initiative launched by Costa Rica and the World Health Organization, to realize equitable global access to COVID-19 medicines, vaccines, therapies and health technologies through the pooling of knowledge, intellectual property and data. OHCHR encourages States and other stakeholders to consider participating in this and similar initiatives.

3. Unfair distribution of vaccines across countries, or hoarding of vaccines, disregards international legal norms and undermines the achievement of the Sustainable Development Goals

Some wealthy countries have reportedly purchased enough doses to vaccinate their entire populations multiple times over by the end of 2021 if all the candidate vaccines in clinical trials are given regulatory approval.[4] At the same time, there are estimates that 90% of the population in 67 countries will not be able receive a COVID-19 vaccine in 2021, despite the fact that five of those countries have reported nearly 1.5 million cases between them.[5]

The International Covenant on Economic, Social and Cultural Rights (ICESCR) requires States to achieve the progressive realisation of the rights protected by the Covenant, including the right to health, both individually and through international assistance and co-operation.[6] States which are able to do so should provide assistance, especially economic, scientific and technical, to developing countries for immunisation against major infectious diseases and for the prevention, treatment and control of epidemic and endemic diseases.[7]

The International Health Regulations (2005) were established to facilitate cooperation in mounting an effective public health response to the international spread of disease. This objective was reaffirmed in the Declaration of Astana (2018) where States reiterated commitments to effective development cooperation and to sharing knowledge and good practices (while fully respecting human rights) in order to prevent, detect and respond to infectious diseases and outbreaks.[8]

The 2030 Agenda for Sustainable Development pledges a revitalisation of the global partnership for sustainable

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[4] This data was produced by the People's Vaccine Alliance. For more information, see: https://www.amnesty.org/en/latest/news/2020/12/campaigners-warn-that-9-out-of-10-people-in-poor-countries-are-set-to-miss-out-on-covid-19-vaccine-next-year/ See also: https://www.oxfam.org/en/press-releases/small-group-rich-nations-have-bought-more-half-future-supply-leading-covid-19.

[5] Kenya, Myanmar, Nigeria, Pakistan and Ukraine (https://www.amnesty.org/en/latest/news/2020/12/campaigners-warn-that-9-out-of-10-people-in-poor-countries-are-set-to-miss-out-on-covid-19-vaccine-next-year/).

[6] ICESCR article 2.1. See also CESCR General Comment No. 3 (1990) on the nature of States parties' obligations (art. 2, para. 1, of the Covenant).

[7] CESCR, General Comment No. 14 (2000) on the right to the highest attainable standard of physical and mental health (art.14 of the Covenant), paras. 43-45. See also UN Human Rights Experts: Universal access to vaccines is essential for prevention and containment of COVID-19 around the world (9 November 2020), available at https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26484&LangID=E.

[8] See Declaration of Alma-Ata, September 1978.

development, including through enhanced North-South, South-South and triangular regional and international cooperation on and access to science, technology and innovation.[9] The 2030 Agenda also commits to reducing inequality within and among countries,[10] making solidarity, cooperation and partnership among States and all stakeholders vital to achieving the Sustainable Development Goals. Achieving Sustainable Development Goal 17, particularly, requires the implementation of the principles of the UN Declaration on the Right to Development, with their mandate for States to cooperate towards an enabling environment for human rights and development.

4. COVID-19 vaccines should be affordable to all and accessible without discrimination

Access to vaccines and medicines is disturbingly uneven in many places, with poorer health outcomes for women and girls, national, ethnic, religious, racial and linguistic minorities, indigenous populations, persons living in poverty, LGBTI people, persons with disabilities, migrants, particularly undocumented migrants, stateless persons, and others experiencing marginalisation. COVID-19 infection rates and outcomes for minorities and people in vulnerable groups have mirrored these patterns, in part due to structural inequalities and discrimination. These facts raise a substantial risk that these populations and groups will fall behind in vaccination rates relative to others. Women and girls risk discrimination in vaccine distribution for many reasons, including higher rates of poverty and the impact of societal norms. [11]

Focused efforts are essential to remove barriers, pre-empt potential discrimination, and monitor distribution to ensure equality and avoid discrimination. These efforts are not only essential to protect human rights, but to ensure the effectiveness of the vaccination campaign. Vaccination distribution plans need to ensure full accessibility for persons with disabilities. Similarly, emerging issues including testing access and protocols, data collection and retention, "immunity passports", surveillance and tracking tools, and the discriminatory treatment of persons who have recovered from COVID-19 all require intensive attention in this context.[12]

5. Prioritisation of vaccine delivery should be done through transparent protocols and procedures that respect human rights

A critical issue today involves the protocols according to which vaccines will be distributed, including prioritisation of groups for access to the vaccine. Those complex criteria have been elaborated in detail through the WHO SAGE values framework for the allocation and prioritisation of COVID-19 vaccination.[13] As those recommendations reflect, the decision as to who should receive priority consideration for the vaccine should be based on appropriate criteria that are in line with human rights standards and norms.

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[9] Sustainable Development Goal No. 17 "Strengthen the means of implementation and revitalize the global partnership for sustainable development," Target 17.6. See also Addis Ababa Action Agenda of the Third International Conference on Financing for Development, paras. 120-121, available at: https://sustainabledevelopment.un.org/content/documents/2051AAAA_Outcome.pdf.

[10] Sustainable Development Goal No. 10, "reduce inequality within and among countries".

[11] See OHCHR Guidance Note on CEDAW and COVID-19, available at: https://www.ohchr.org/Documents/HRBodies/TB/COVID19/Guidance_Note.docx and COVID-19 and Women's Human Rights (OHCHR), available at: https://www.ohchr.org/Documents/Issues/Women/COVID-19_and_Womens_Human_Rights.pdf.

[12] See: Racial Discrimination in the COVID-19 Context (OHCHR), available at https://www.ohchr.org/Documents/Issues/Racism/COVID-19_and_Racial_Discrimination.pdf.

[13] Available at: https://www.who.int/publications/i/item/who-sage-values-framework-for-the-allocation-and-prioritization-of-covid-19-vaccination.

The determination of early vaccine recipients should not, for instance, exclude anyone explicitly or implicitly on the basis of older age, disability, race, gender, migration status or other discriminatory criteria, and should be conducted through a fair, transparent, inclusive and accountable process.[14] Civil society and communities should be able to participate meaningfully in the development of vaccine distribution protocols and in policies concerning prioritisation of allocations. Particular care should be taken to ensure that those who are often invisible in many ways, including people in institutional settings such as care homes, psychiatric institutions, homes for persons with disabilities, homeless shelters, immigration detention centres and prisons, are included without discrimination in vaccine distribution policies and plans.

6. Private profit should not be prioritised over public health

Intellectual property rights should not be applied in a manner which undermines the rights to health, food, science and other human rights.[15] Obligations under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), for example, should be interpreted consistently with the protection of public health, in accordance with the Doha Declaration on the TRIPS Agreement and Public Health.

States have a duty to prevent unreasonably high costs for access to essential medicines and vaccines.[16] To that end, they should take steps to protect the primacy of public health over private profit in line with their commitments to support research and development of vaccines and medicines, as well as preventative measures and treatments for communicable diseases, especially those that disproportionately impact developing countries.[17]

7. Non-discriminatory access to accurate health information is essential

Now more than ever, the free flow of information should be facilitated in a safe environment and without threat or sanction.[18] Limiting stakeholder involvement and critical feedback, including debates involving experts, medical professionals, journalists and other influencers, undermines an effective response to COVID-19.

Access to health information and education for health professionals, decision-makers and the public is crucial for facilitating optimal participation in the health response, the uptake of health measures and well informed decision-making. Relevant information on the COVID-19 pandemic and response should reach all people, without exception. This requires making information available in readily understandable formats and languages, including indigenous languages and those of national or ethnic, religious and linguistic minorities. It also requires adapting information for people with specific needs, including the visually- and hearing-impaired, and reaching those with limited or no ability to read or with no internet access. States should also work to ensure the broadest possible access to internet service by taking steps to bridge digital divides, including the gender digital divide.

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[14] See also CESCR, General Comment No. 25 (2019), para. 16 - "States parties should direct their own resources and coordinate actions of others to ensure that scientific progress happens and that its applications and benefits are distributed and are available, especially to vulnerable and marginalized groups."

[15] See the report of the Special Rapporteur in the field of cultural rights, A/70/279, para. 90.

[16] CESCR, 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 (article 15, paragraph 1 (c), of the Covenant), paras. 35 and 39(e).

[17] Addis Ababa Action Agenda, para. 121, https://sustainabledevelopment.un.org/content/documents/2051AAAA_Outcome.pdf

[18] See Civic Space and COVID-19 (OHCHR): https://www.ohchr.org/Documents/Issues/CivicSpace/CivicSpaceandCovid.pdf . See also Report of the Special Rapporteur on Freedom of Expression, https://undocs.org/A/HRC/44/49.

8. Pharmaceutical companies, like all companies, have a responsibility to respect human rights

All businesses have a responsibility to respect human rights, including pharmaceutical companies and others involved in the response to COVID-19. The UN Guiding Principles on Business and Human Rights require businesses to know and show that they have taken all reasonable measures to prevent and mitigate any human rights impacts from their COVID-19 responses.[19]

This means that companies should undertake human rights due diligence. In this context, due diligence would require that pharmaceutical companies make realistic assessments of harmful side effects of any drug and mitigate these effects to the greatest extent possible before distributing the drug to the public. Similarly, companies' decisions regarding pricing and distribution must consider the adverse impacts such decisions will have as regards discriminatory access to vaccines, particularly for those in situations of vulnerability and marginalisation. To the extent that such decisions might adversely impact the right to health, companies should take appropriate action to prevent and mitigate any harms, including through exerting leverage to influence the actions of other potentially responsible parties.

[19] See: Business and Human Rights in Times of COVID-19 (OHCHR), available at: https://www.ohchr.org/Documents/Issues/Business/BusinessAndHR-COVID19.pdf.