

8 November 2021

## LAWASIA STATEMENT COVID-19: URGENT NEED TO CLOSE THE GLOBAL VACCINE GAP

1. There is an unconscionable inequity in access to COVID-19 vaccines across nations. The situation is especially dire in Asia and the Pacific. LAWASIA reminds States and businesses that their obligations are not just moral. There is an obligation under international human rights law to take all appropriate measures to ensure equitable access across the world to these life-saving vaccines. States must therefore urgently put in place concrete and binding measures to ensure institutional investors, fund managers, pharmaceutical companies and all other parties involved ensure universal and equitable access to affordable and effective vaccines for COVID-19.

### I. Impact of the Pandemic

2. The COVID-19 pandemic has infected more than 241.7 million people since 2020 and has caused 4.9 million deaths worldwide.<sup>1</sup> While many parts of the world are coming back to normalcy, the pandemic continues to wreak havoc across the world.<sup>2</sup> Asia and the Pacific, which is home to 60% of the world's population has been disproportionately impacted by the pandemic, with more than 60.1 million COVID-19 cases as of October 2021.<sup>3</sup>

Global health leaders, including the World Health Organisation, and civil society leaders like the People's Vaccine Alliance,<sup>4</sup> agree that the only way for a possible return to normalcy from the COVID-19 pandemic is for as many people as possible to have access to the vaccines.<sup>5</sup>

3. LAWASIA is concerned to note that despite the remarkably fast development of safe and effective vaccines for COVID-19, which was a result of international scientific cooperation, intensive research and substantive financial support by states, their distribution across nations has been starkly inequitable. As of October 2021, only about 49.6% of the world's population have had access to at

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<sup>1</sup> CNN. *Tracking Covid-19's global spread*, Last updated October 20, 2021. <https://edition.cnn.com/interactive/2020/health/coronavirus-maps-and-cases/>

<sup>2</sup> Andrew Gregory. *Covid 'still running rampant' worldwide, warns creator of Oxford vaccine*. The Guardian. 6 October 2021, <https://www.theguardian.com/world/2021/oct/06/covid-still-running-rampant-worldwide-warns-creator-of-oxford-vaccine>

<sup>3</sup> OCHA. *Asia Pacific COVID-19. Humanitarian Data Portal*. <https://interactive.unocha.org/data/ap-covid19-portal/> [last accessed 25 October 2021].

<sup>4</sup> People's Vaccine Alliance. *5 Steps to End Vaccine Apartheid*. <https://peoplesvaccine.org/our-demands/>. The Alliance describes itself as "a coalition of organisations and activists united under a common aim of campaigning for a 'people's vaccine' for COVID-19."

<sup>5</sup> World Health Organisation. *Leaders Make Urgent Call To Accelerate Vaccination Globally And In Africa*, 14 September 2021, <https://www.who.int/news/item/14-09-2021-leaders-make-urgent-call-to-accelerate-vaccination-globally-and-in-africa>.

least one vaccine. This figure is heavily skewed towards the developed world: 62.79% of people in developed countries, as compared to just 4.51% of people in low-income countries, have been vaccinated with at least dose.<sup>6</sup> Only 1.4% of the poorest countries have been fully vaccinated.<sup>7</sup>

4. This is largely due to the actions of, what Amnesty International calls in a recent report, “a nexus of wealthy states and powerful corporations”.<sup>8</sup> This disparity has exposed the fault lines of inequitable access to health resources globally and within nations.<sup>9</sup> Poorer nations, and poorer populations within states have not been able to get access to adequate vaccines, while richer nations are hoarding vaccines,<sup>10</sup> using vaccine stocks to roll out “booster shots” for their populations,<sup>11</sup> and in some cases, even discarding expired vaccines.<sup>12</sup> Additionally, many business entities, including the pharmaceutical companies that developed COVID-19 vaccines, (often with substantial financial support from states) have refused to participate in initiatives to boost global supplies, waive intellectual property requirements to share vaccine technology, or prioritize vaccine delivery to poorer countries.<sup>13</sup> In some cases, pharma companies have only agreed to supply to richer nations.<sup>14</sup>

## II. Lack of Global Cooperation

5. This inequity is despite multiple global and multilateral efforts rolled out to ensure equitable and universal access to COVID-19 vaccines, which have been hampered by the actions of richer countries and pharmaceutical countries. Rich countries and pharmaceutical companies promised to donate and supply vaccines to low-income countries, but a recent report found that only 14% of the 1.8 billion pledged doses have been delivered.<sup>15</sup>
6. The COVAX facility, the UN-backed multilateral procurement and distribution mechanism for the vaccine, “COVID-19 Vaccine Global Access” aimed to guarantee widespread access to COVID-19

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<sup>6</sup> Josh Holder. *Tracking Coronavirus Vaccinations Around the World: Updated Oct. 22, 2021*. New York Times. 22 October 2021. <https://www.nytimes.com/interactive/2021/world/covid-vaccinations-tracker.html>

<sup>7</sup> Andrew Gregory. *Only 14% of promised Covid vaccine doses reach poorest nations*. The Guardian. 21 October 2021. <https://www.theguardian.com/society/2021/oct/21/only-14-of-promised-covid-vaccine-doses-reach-poorest-nations>

<sup>8</sup> Amnesty International, *A Double Dose of Inequity: Pharma Companies and the COVID-19 Vaccines Crisis*. 22 September 2021. <https://www.amnesty.org/en/documents/pol40/4621/2021/en/>, pg. 4. (Hereinafter “Amnesty International’s Report”).

<sup>9</sup> Aruna Kashyap, Kyle Knight, Margaret Wurth. Human Rights Watch. *COVID-19 Exposes Warped Global Health Power: The System Needs a Course Correction*. Business and Human Rights Journal. Business and Human Rights Journal. <https://www.cambridge.org/core/journals/business-and-human-rights-journal/article/abs/covid19-exposes-warped-global-health-power-the-system-needs-a-course-correction/F0C5CD58F0672F357DD05EF0A89A1235>, pg. 1 – 8.

<sup>10</sup> Fatima Bhutto. *The world’s richest countries are hoarding vaccines. This is morally indefensible*. The Guardian. 17 March 2021; *Rich countries hoarding Covid vaccines, says People’s Vaccine Alliance*. BBC. 9 December 2020. <https://www.bbc.com/news/health-55229894>

<sup>11</sup> Haroon Siddique. *Booster jabs for rich countries will cause more deaths worldwide, say experts*. 13 August 2021. The Guardian. <https://www.theguardian.com/society/2021/aug/13/covid-booster-jabs-for-rich-countries-will-cause-more-deaths-worldwide-say-experts>

<sup>12</sup> Melody Schreiber. *US throws out millions of doses of Covid vaccine as world goes wanting*. The Guardian. 16 October 2021. <https://www.theguardian.com/world/2021/oct/16/us-throws-out-millions-doses-covid-vaccine-world-shortages>

<sup>13</sup> Amnesty International’s Report, pg. 4.

<sup>14</sup> Amnesty International’s Report, pg. 4.

<sup>15</sup> Andrew Gregory. *Only 14% of promised Covid vaccine doses reach poorest nations*. The Guardian. 21 October 2021. <https://www.theguardian.com/society/2021/oct/21/only-14-of-promised-covid-vaccine-doses-reach-poorest-nations>

vaccines. However, this has been impeded by rich countries entering into bilateral supply deals<sup>16</sup> with pharmaceutical companies, implementing export bans, and delays in filing for regulatory approval.<sup>17</sup> As a result, it has largely failed to ensure that less developed countries have access to the vaccines. Although Johnson & Johnson, Moderna, Astra Zeneca and Pfizer/Biotech promised to deliver 994 million doses under Covax, only 12% of these have been delivered as of October 2021.<sup>18</sup> Its last supply update reported a shortfall of nearly 1/3<sup>rd</sup>.<sup>19</sup>

7. Intellectual property laws are also a barrier to more countries producing the vaccines, which have been developed by private companies. The World Trade Organization's Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS) envisions that in some cases exceptions or "flexibilities" to the strict controls of IP law, for certain life-saving medicines. However, as these flexibilities are time-consuming and onerous, they are not considered adequate for health emergencies.<sup>20</sup>
8. Recognising these limitations, in October 2020, India and South Africa proposed a "Partial And Temporary Waiver of Intellectual Property Rights For Products For The Prevention, Treatment And Containment of Covid 19."<sup>21</sup> Intending to ensure fast access to affordable solutions to prevent, contain, and treat COVID-19, the proposed measure would temporarily waive the obligations under World Trade Organisation's TRIPS agreement, and permit countries to suspend intellectual property protections for COVID-19 medical products for the duration of the pandemic.<sup>22</sup> This is intended to last until the pandemic ends, and includes vaccines, medicines, diagnostics, personal protective equipment, and ventilators. Although the proposal has the support of almost 100 nations,<sup>23</sup> to date most developed nations, with the notable exception of the United States of America,<sup>24</sup> have refused to co-sign the proposal.<sup>25</sup> Vaccine companies have also strongly opposed the proposal.<sup>26</sup>

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<sup>16</sup> Reuters. *WHO: bilateral COVID-19 vaccine deals not good for COVAX*. 4 March 2021. <https://www.reuters.com/article/us-health-coronavirus-who-covax-idUSKBN2AW1BT>

<sup>17</sup> UN News. *COVID-19: 'Unacceptable' deals and delays, hampering lifesaving COVAX deliveries*. 8 September 2021. <https://news.un.org/en/story/2021/09/1099422>

<sup>18</sup> Andrew Gregory. *Just 261m of the 1.8bn doses pledged by wealthy nations have arrived in low-income countries*. The Guardian. 21 October 2021. <https://www.theguardian.com/society/2021/oct/21/only-14-of-promised-covid-vaccine-doses-reach-poorest-nations>. Referencing

<sup>19</sup> Hazem Badr, Helen Mendes and Papiya Bhattacharya. *Homegrown Covid vaccines fill gap as UN Covax scheme misses target*. 13 October 2021. The Guardian. <https://www.theguardian.com/global-development/2021/oct/13/local-covid-vaccines-fill-gap-as-un-covax-scheme-misses-target>

<sup>20</sup> For example, to date, only one compulsory licence has been granted under the WTO TRIPS Agreement Article 31bis which permits compulsory licencing. See Amnesty International's Report, pg. 22, fn. 58.

<sup>21</sup> Council for Trade-Related Aspects of Intellectual Property Rights. *Waiver from Certain Provisions of the TRIPS agreement for the prevention, containment, and treatment of COVID-19: Communication from India and South Africa*. IP/C/W/669. <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/IP/C/W669.pdf&Open=True>. 2 October 2020. This was updated in May 2021.

<sup>22</sup> John Zarocostas, *What next for a COVID-19 intellectual property waiver?* The Lancet. May 2021. [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(21\)01151-X/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(21)01151-X/fulltext).

<sup>23</sup> World Trade Organization. *Waiver from Provisions of the TRIPS agreement for the prevention, containment, and treatment of COVID-19. Revised Decision Text*. 25 May 2021. IP/C/W/669/Rev.1 <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/IP/C/W669R1.pdf&Open=True>

<sup>24</sup> *Covid: US backs waiver on vaccine patents to boost supply*. 6 May 2021. BBC. <https://www.bbc.com/news/world-us-canada-57004302>

<sup>25</sup> Andrew Gregory. *Only 14% of promised Covid vaccine doses reach poorest nations*. The Guardian. 21 October 2021. <https://www.theguardian.com/society/2021/oct/21/only-14-of-promised-covid-vaccine-doses-reach-poorest-nations>

<sup>26</sup> Amnesty International's Report. Pg. 23.

9. The WHO-led Covid-19 Technology Access Pool (C-TAP) is another initiative which calls on industry to participate to waive intellectual property. However, as of October 2021, not one company has participated to share intellectual property or know-how.<sup>27</sup>

### III. Relevant Human Rights Standards

10. LAWASIA echoes the concerns raised by other UN actors that these actions and inactions on the part of countries, corporations and investment funds are in violation of their human rights obligations.<sup>28</sup>
11. Under international human rights law, both states and corporations have an obligation to ensure universal, equitable, and affordable access to quality life-saving vaccines. Human rights law recognises and protects the right to life,<sup>29</sup> the right to health,<sup>30</sup> and the right to the benefits of scientific progress.<sup>31</sup> Additionally, the UN Guiding Principles on Business and Human Rights, mandate corporations to respect human rights and “do no harm.”<sup>32</sup>
12. States are enjoined to achieve the progressive realisation of the rights protected by the International Covenant on Economic, Social and Cultural Rights, including the right to health, both individually and through international assistance and co-operation.<sup>33</sup> Where states are not able to meet these targets themselves, other countries are obligated to provide assistance for this. As the UN Committee on Economic Social and Cultural Rights has noted, States have extraterritorial obligations to uphold the global efforts to combat COVID-19, which includes sharing research, knowledge, equipment, and supplies, ensuring that no unilateral measures restrict access to essential health products, and ensuring that any restrictions to control national supply are proportional.<sup>34</sup> These are *erga omnes* obligations, owed towards all persons regardless of nationality.<sup>35</sup> States must also take steps to investigate violations by third parties (including corporations).

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<sup>27</sup> C-TAP. <https://www.who.int/initiatives/covid-19-technology-access-pool>; Amnesty International’s Report, pg. 5.

<sup>28</sup> Committee on Economic, Social and Cultural Rights (CESCR). *Statement on universal affordable vaccination against coronavirus disease (COVID-19), international cooperation and intellectual property*. E/c.12/2021/1. 23 April 2021.

<sup>29</sup> United Nations, *International Covenant on Civil and Political Rights* (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR). Article 6.

<sup>30</sup> United Nations. *International Covenant on Economic, Social and Cultural Rights* (adopted 16 December 1966, entered into force 3 January 1976) (ICESCR). Article 12.

<sup>31</sup> United Nations. *International Covenant on Economic, Social and Cultural Rights* (adopted 16 December 1966, entered into force 3 January 1976) (ICESCR). Article 15.

<sup>32</sup> Office of the High Commissioner for Human Rights. *Guiding Principles for Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*. 2011. [https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf). Principles 12, 13.

<sup>33</sup> United Nations. *International Covenant on Economic, Social and Cultural Rights* (adopted 16 December 1966, entered into force 3 January 1976) (ICESCR). Article 2.1.

<sup>34</sup> UN Committee on Economic, Social and Cultural Rights (CESCR). 17 April 2020. *Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights*. [digitallibrary.un.org/record/3856957/files/E\\_C.12\\_2020\\_1-EN.pdf](https://digitallibrary.un.org/record/3856957/files/E_C.12_2020_1-EN.pdf) para 20.

<sup>35</sup> UN Human Rights Committee (HRC), *General Comment No. 31 (80) The nature of the general legal obligation imposed on States Parties to the Covenant*, 26 May 2004, CCPR/C/21/Rev.1/Add.13, available at: <https://www.refworld.org/docid/478b26ae2.html>

**a. Right to life**

13. Article 6 of the International Covenant on Civil and Political Rights recognises and protects the right to life of all human beings.<sup>36</sup> This right imposes a duty on states to protect, which includes taking immediate action to counter the pandemic. The duty to protect life also implies that States parties should take appropriate measures to address the “general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity,” which includes the prevalence of life-threatening diseases.<sup>37</sup> No derogation is permissible from this right, and states parties are mandated to ensure that they take necessary actions to provide access to provide access to life saving medicines and essential health care without delay.

**b. Right to health**

14. Articles 25 and 27 of the Universal Declaration of Human Rights recognise the right to health.<sup>38</sup> Additionally, Article 12 of the International Covenant on Economic, Social and Cultural Rights, which enshrines the right to health and calls on all states to take all reasonable measures to prevent epidemics.<sup>39</sup> States must also make joint efforts to, inter alia, make available relevant technologies, use and improve epidemiological surveillance and data collection on a disaggregated basis and implement or enhance immunisation programmes, amongst other strategies of infectious disease control.<sup>40</sup>

**c. Right to enjoy benefits of scientific progress**

15. Article 15 of the Convention on Economic, Social and Cultural Rights recognizes that everyone has the right to enjoy, equitably with one another, the benefits of scientific progress and its applications which are necessary to enjoy the highest attainable standard of health.<sup>41</sup>

**d. Obligations on corporations and institutional investors**

16. Corporations are not immune from their binding rights obligations. The United Nations Guiding Principles on Business and Human Rights, the authoritative global standard for the human rights responsibilities of enterprises, mandate corporations take all necessary steps to respect human rights and at the very least, to “do no harm”.<sup>42</sup>

17. Intellectual property and patent legal regimes must not undermine the enjoyment of economic, social and cultural rights. Equally, the DOHA Declaration on the WTO’s Trade Related Aspects of Intellectual property Rights (TRIPS), which regulates the principles of intellectual property protection

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<sup>36</sup> United Nations, *International Covenant on Civil and Political Rights* (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR). Article 6.

<sup>37</sup> UN Human Rights Committee, *General Comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life*. 30 October 2018, CCPR/C/GC/36. paras 6, 26.

<sup>38</sup> Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) Articles 25, 27.

<sup>39</sup> United Nations. *International Covenant on Economic, Social and Cultural Rights* (adopted 16 December 1966, entered into force 3 January 1976) (ICESCR).

<sup>40</sup> Committee on Economic, Social and Cultural Rights (CESCR) *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)*. 2000. <https://www.refworld.org/pdfid/4538838d0.pdf>. para. 16.

<sup>41</sup> 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)*, <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuW1a0Szab0oXTdImnsJZZVQdxONLLLJiul8wRmVtR5Kxx73i0Uz0k13FeZiqChAWHKFuBqp%2B4RaxfUzqSAfyZYAR%2Fq7sqC7AHRa48PPRRALHB> para. 70.

<sup>42</sup> Office of the High Commissioner for Human Rights. *Guiding Principles for Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*. 2011. [https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf). Principles 12, 13.

at an international level, states that the international intellectual property regime should be interpreted in a manner supportive to the protection of public health and in particular to advance access to medicines for all.<sup>43</sup>

18. Further guidance for vaccine developers is provided in the UN Human Rights Guidelines for Pharmaceutical Companies in relation to Access to Medicines.<sup>44</sup> These guidelines apply to pharmaceutical companies and their subsidiaries. Under it, pharmaceutical companies are enjoined to take steps to ensure that the needs of the most marginalised persons are accounted for, which includes ensuring that the pricing of vaccines is not done in a manner which impedes accessibility and affordability. The need for these corporations to avoid prioritizing profit was echoed by a group of prominent human rights experts in May 2020.<sup>45</sup>
19. Under the UN Guiding Principles on Human Rights institutional investors also are under an obligation to respect human rights wherever they operate and throughout their operations, which includes conducting pro-active and ongoing human rights due diligence in the companies they invest in.<sup>46</sup>

#### IV. Need for Urgent Action

20. Unless richer countries and pharmaceutical companies take measures to change these underlying factors, people in less developed countries have little hope to see a fast recovery from COVID-19, or a return to normalcy. The “vaccine gap” which has been created by the overallocation to and wastage of vaccines by developed nations, the failure to reach consensus to waive intellectual property requirements for the development of vaccines, and the failure of big pharmaceutical companies to prioritize poorer nations is a gross violation of the human rights obligations of richer countries and pharmaceutical companies.
21. LAWASIA echoes the concerns of the Committee on Economic, Social and Cultural Rights and calls on states to end “health isolationism”<sup>47</sup> and ensure there is meaningful international cooperation to take all steps necessary to end the pandemic and ensure equality of access to COVID-19 vaccines and medicines, transfer of relevant technology and temporary waiver of Intellectual Property Rights. In particular:
  - a. States must ensure equality of access to the COVID-19 vaccines and medicines around the world; end vaccine hoarding; commit to distributing left-over stocks to low-income countries; offer meaningful support for the proposed agreement on “Partial and Temporary Waiver of Intellectual Property Rights For Products For The Prevention, Treatment And Containment of

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<sup>43</sup> DOHA WTO Ministerial 2001: TRIPS. *Declaration on the TRIPS Agreement and Public Health* WT/MIN(01)/DEC/2 [https://www.wto.org/english/thewto\\_e/minist\\_e/min01\\_e/mindecl\\_trips\\_e.htm](https://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_trips_e.htm)

<sup>44</sup>OHCHR, Human Rights Guidelines for Pharmaceutical Companies in relation to Access to Medicines (Human Rights Guidelines for Pharmaceutical Companies), A/63/263, 11 August 2008, [www.ohchr.org/documents/issues/health/guidelinesforpharmaceuticalcompanies.doc](http://www.ohchr.org/documents/issues/health/guidelinesforpharmaceuticalcompanies.doc)

<sup>45</sup> OHCHR, 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 [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26484&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26484&LangID=E)

<sup>46</sup> UN Guiding Principles on Business and Human Rights, Principles 15 and 17.

<sup>47</sup> Committee on Economic Social and Cultural Rights (CESCR). *Statement on universal affordable vaccination against coronavirus disease (COVID-19), international cooperation and intellectual property*. 23 April 2021. <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuW1AVC1NkPsgUedPIF1vfPMKseJUC1C16FcIakFK95v85g4Ik7k7QBI8EdfqmCITMrneFvtX1I0IL8hktDGNgWJc7FBC2uG%2b%2fdxsnIN1jrczo>

Covid 19”; put in place binding measures to ensure vaccine manufacturers do not impede access to the vaccine.

- b. Vaccine production companies must comply with the UN Guiding Principles (UNGP) on Business and Human Rights and take all measures to ensure all persons equitable access to vaccines; not try to push back on waivers to licensing regimes; refrain from prioritizing profit, ensure transparency.
- c. Institutional investors and fund managers must, in accordance with their human rights responsibilities, exert their influence on pharma companies to ensure “a fair and equitable global response to the pandemic”. This must include conducting comprehensive human rights due diligence on their investments and financial services,

22. LAWASIA echoes the concerns of the United Nations Office of the High Commissioner on Human Rights, and demands that countries and corporates to ensure affordable, equitable and non-discriminatory access to the vaccine as a fundamental human right.<sup>48</sup>

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<sup>48</sup> United Nations Office of the High Commissioner for Human Rights (OHCHR). *Human Rights and Access to Covid-19 Vaccines*. 17 December 2020. [https://www.ohchr.org/Documents/Events/COVID-19\\_AccessVaccines\\_Guidance.pdf](https://www.ohchr.org/Documents/Events/COVID-19_AccessVaccines_Guidance.pdf)