Urgent Action Appeal to the United Nations (UN) Committee on the Elimination of All Forms of Racial Discrimination (CERD) - 28 March 2022 Update

Immediate and Long-Term Damage of Entrenching Racial Discrimination Caused by Failures by the certain States (Germany, Switzerland, the United Kingdom of Great Britain & Northern Ireland, the United States of America) to Take Measures to Ensure Equitable Global Access to and Distribution of Lifesaving COVID-19 Vaccines and Other Healthcare Technologies

I Introduction and Background

1. Petitioners submit this 28 March 2022 update of our urgent appeal originally submitted 25 October 2021, given renewed urgency in anticipation of the negotiations of the proposed TRIPS waiver at the upcoming World Trade Organization's Ministerial Conference, rescheduled for June 13, 2022. As set forth below, opposition to a TRIPS waiver as to intellectual property barriers on COVID-19 vaccines, therapeutics, diagnostics and other healthcare technologies is one of the primary policy choices with racially discriminatory effects we challenge in the present urgent appeal.

2. There is clear evidence that the impact of the coronavirus pandemic has been disproportionately greater on specific communities: people of colour, Indigenous Peoples, stateless persons, migrant workers, persons with disabilities and women, especially those that intersect with the aforementioned identity bases. These impacts have been direct, in terms of propensity to contract the virus, lack of information (in relevant languages) about preventive measures being made available, risk of disease progression and long-covid, and number of fatalities. They have also had downstream indirect impacts in terms of pushing communities towards greater poverty, towards contemporary forms of slavery and susceptibility to violence or destabilizing emotional trauma. Influential studies such as those by Morales and Ali and by Mathur et al. published in *The Lancet* suggest specific comorbidities that disparately impact minority groups. When cross-checked against local reports, these indicate that the problem is global, systemic, widespread and raises the spectre of ossifying existing racially discriminatory structures both within and between countries (see, e.g., this report on Latin America, and this from Brazil).

3. The development of tests, vaccines and therapeutics has been key in this global health emergency in order to prevent the spread of COVID-19 and slow down fatalities as a consequence of contracting the virus. These biomedical research efforts, often benefiting from open sharing of the coronavirus genome, global cooperation and/or ample public subsidy, marked a breakthrough in the technical ability to combat the spread of infection and death.

4. However, intellectual property barriers stand in the way of ensuring global equitable access to these medical tools that are needed to respond to the pandemic public health needs, and this inequity falls disproportionately along racial lines.

5. The contribution of intellectual property barriers to inequitable and discriminatory access to vital healthcare technologies was highlighted during the human immunodeficiency virus, acquired immunodeficiency syndrome (HIV/AIDS) epidemic. In South Africa, for example, at the height of the HIV/AIDS crisis, the government passed legislation allowing parallel importation of antiretroviral drugs without the permission of patent holders. A legal challenge to the legislation by the

Pharmaceutical Manufacturers Association elicited widespread public condemnation and was eventually withdrawn. Without the government having recognised and sought to ameliorate the significant negative impact of intellectual property-holder interests, the antiretrovirals programme would not have been possible and millions more lives would have been lost.

6. One study by Gaviria and Kilic described how the complex network of patents, trade secrets and know-how on COVID-19 mRNA vaccine technologies creates hard-to by-pass legal barriers for public access to COVID-19 medical technologies, this despite the benefits of the mRNA technology in the current context being demonstrable. Early on in the pandemic, South Africa faced challenges accessing key chemical reagents for COVID-19 diagnostic tests due to proprietary protections on the machines and the reagents. Treatment providers and governments have faced intellectual property and other types of monopoly barriers over medicines, masks, ventilator valves and reagents for testing kits. Access to diagnostics has faced challenges, with, for instance, the Cepheid GeneXpert molecular test (a good option for many low- and middle-income countries due to the existing network of GeneXpert testing facilities for tuberculosis) being sold for an estimated three times higher than the cost of production, with the company refusing to share intellectual property, despite being subsidized with some $250 million from public funds. More recently, access to COVID therapeutics (e.g. tocilizumab) remains limited in the face of intellectual property monopolies, limited supply and high prices. In January 2022, Médecins sans Frontières (MSF) reported that U.S.-based Eli Lilly priced a treatment course of baricitinib at USD 2,326, despite the cost of manufacture estimated as low as USD 0.78 per treatment course. MSF also reported in September 2021 that U.S.-based Regeneron priced COVID therapeutic cocktail casirivimab and imdevimab at USD 820 in India, USD 2,000 in Germany and USD 2,100 in the U.S., despite the cost of manufacture estimated at large scale to be below USD 100 per gram.

7. In the area of therapeutics, the World Health Organisation (WHO) recommends biological medicines (IL6 inhibitors) for the treatment of critically and severely ill COVID-19 patients. However, access to these classes of drugs remains limited due to intellectual property monopolies, limited supply and high prices in low- and middle-income countries. Pharmaceutical corporations continue to pursue patent monopolies and market exclusivities and refuse to engage in the transfer of technology and data sharing to facilitate alternative suppliers. Under the current system, there is one sole registered supplier in the global market.

8. As new outpatient antiviral medicines such as Merck's molnupiravir and Pfizer's nirmatrelvir + ritonavir become available in high-income country markets, most available supplies are being preferentially supplied to those high-income markets, and the patent holders maintain exclusive rights over nearly 50% of the global market, which includes many middle-income countries. Although both Merck and Pfizer have entered into geographically limited voluntary licences with the Medicines Patent Pool, generics are slow to enter the market and access will be tightly constrained because of patent rights.

9. For drugs repurposed for COVID-19, the pharmaceutical industry is filing patents simply to extend their market monopoly on the medicine. This is an all-too-familiar move by the pharmaceutical industry, which aims to maximise profits and artificially

extend the term of monopoly on known medicines while the additional patents are not linked to any genuine innovation.

10. COVID-19 healthcare technology intellectual property monopolies during a pandemic have contributed to:

    (i) production capacity and control being concentrated in the hands of a few high income countries, with countries from the global south facing insufficient production, lack of diversified supplies and unaffordable prices of vaccines, therapeutics, diagnostics and other COVID-19 healthcare technologies;

    (ii) making governments dependent on sole/few registered suppliers in the global market, often leading to shortages of certain vaccines, tests and therapeutics;

    (iii) lack of acquisition of adequate doses of vaccines and therapeutics in many states, particularly in the global south;

    (iv) the domination of the "vaccine and therapeutic market" by a few actors, principally in the global north due to high prices set by the pharmaceutical industry;

    (v) the failure to enable global licensing for mass and wide-scale distribution of vaccines, therapeutics and other COVID-19 healthcare technologies;

    (vi) the hoarding of vaccines by the Respondent States (listed below); and

    (vii) an untold number of potentially avoidable deaths, trillions of dollars in lost economic activity and harms to numerous human rights, such as the right to education, inequitably distributed so as to reinforce racialized exclusion along former colonial lines.

11. Yet the Respondent States of **Germany, Switzerland, the United Kingdom of Great Britain & Northern Ireland** have opposed a request spearheaded by India and South Africa in October 2020 at the WTO to temporarily waive intellectual property protections (including patents, copyrights, industrial design and undisclosed information) on healthcare technologies concerning COVID "prevention, containment or treatment"[1] imposed by the Trade-Related Intellectual Property Rights Agreement (TRIPS), later revised in May 2021. In addition, **Germany, Switzerland, and the United Kingdom of Great Britain & Northern Ireland** have failed to mandate technology transfers by nationally-based pharmaceutical companies that insist on guarding their intellectual property monopolies on COVID healthcare technologies. The Respondent State of the **United States of America** has declared support for a narrow vaccines-only waiver and failed to use all its available tools, including activating its Defense Production Act, to mandate COVID-19 healthcare technology transfers from nationally-based pharmaceutical companies.

12. In mid-March 2022, news emerged of closed door negotiations over the intellectual property waiver between the EU, United States, South Africa and India. In the course

[1] We use the term "COVID healthcare technologies" to include diagnostics, vaccines, therapeutics, and other relevant medical supplies (i.e. the "prevention, containment or treatment" referenced in the TRIPS waiver proposal): https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/IP/C/W669.pdf.

of the negotiations, the text proposal was leaked, leading to broad criticism that it did not go far enough because it only covered patents on vaccines and was geographically limited. It also imposed greater obstacles than those contained in the TRIPS agreement. In the days that have followed, civil society members, prominent economists like Joseph Stiglitz and even the former UN Secretary General Ban Ki-Moon have called on India and South Africa to reject the proposed text as inadequate, calling it a "half measure" and a "sham of a waiver." Government officials from Mexico and other countries have stated opposition to the leaked text.

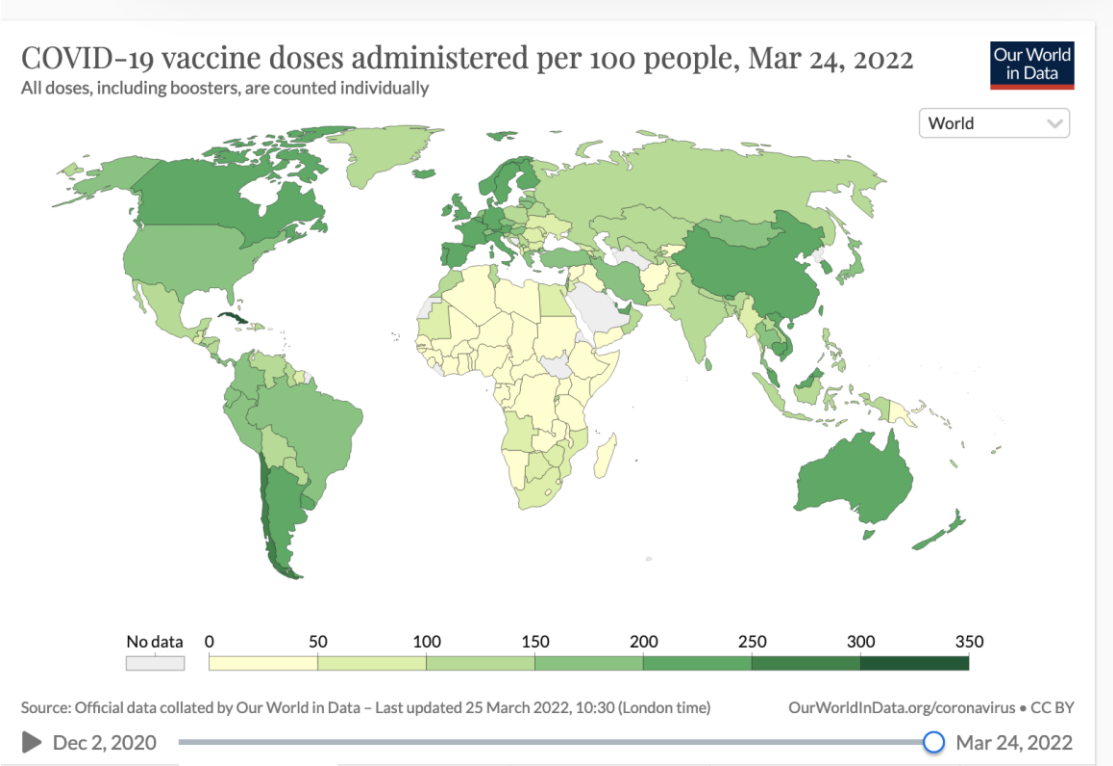
13. The draft text does not provide for access to confidential information/trade secrets essential to allow commercial manufacturing of vaccines of assured quality, thus it fails to deliver actual access even to its purported focus - vaccines. The draft text inexplicably and irrationally delays a decision on key therapeutics and diagnostic tests even as these countermeasures are widely deployable and available in high-income countries. Making the draft text even less fit for purpose, it needlessly limits existing TRIPS-compliant flexibilities, e.g. on the scope of authorizations, and imposes impractical TRIPS-plus requirements that involuntary-use authorizations list patents on all components and final vaccines, that anti-diversion measures be undertaken, and that detailed notifications be made to the WTO on products and entities authorised, countries to which vaccines will be provided and quantities provided, and duration of the authorization. Given these deficiencies, we do not believe this text alters the main arguments sustained in this urgent appeal.

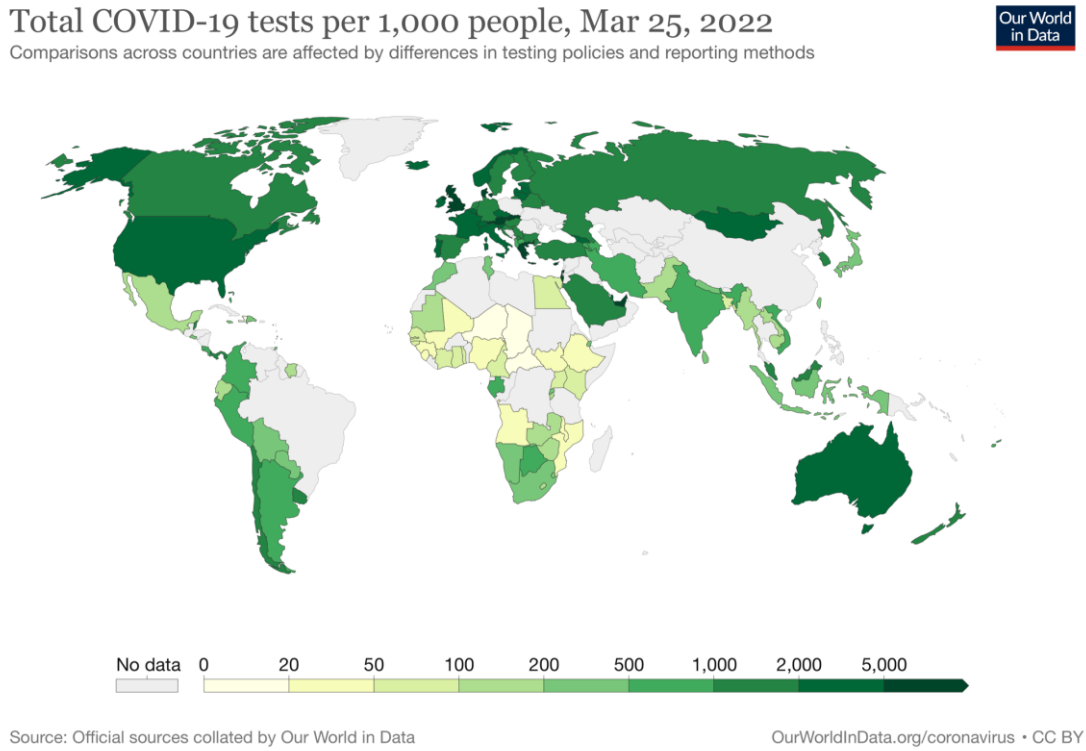
14. It is our submission that Respondent States' resistance to the comprehensive TRIPS waiver (and its implementation) since it was originally proposed eighteen months ago has significantly set back what progress could have been made in terms of increasing global supply and equitable access to vaccines and other COVID-19 healthcare technologies. Médecins Sans Frontières has described in detail both the potential for mRNA technology to be applied in numerous life-saving scenarios and the ability for production capacity to be quickly scaled up in regions like Africa where there is currently an overreliance on importation. Public Citizen published a report outlining a process using computational modeling to show how global supply of mRNA vaccines could significantly increase in just one year through the establishment of regional hubs. Access IBSA and other experts identified over 100 firms across the global south that would have the potential to produce mRNA vaccines if the technology and know-how to do so were shared. Had Respondent States supported the temporary TRIPS waiver request or its implementation and enforcement, and not delayed negotiations to remove IP barriers and share technology, precious time (and therefore potential to save lives) could have been saved in building up regional capacity across the global south. The refusal to internationally cooperate in this regard has thus deepened structural racial discrimination along a global north-south divide. It is not, however, too late.

15. According to the UN Secretary General's remarks in late September 2021, "73 percent [of COVID vaccines] have been [administered] in just 10 countries. High-income countries have administered 61 times more doses per inhabitant than low-income countries. Just 3 percent of Africans have been vaccinated." Since then, vaccination rates have increased unevenly across the global south, with Africa still behind with only 15.32% of its population fully vaccinated as of March 2022. Furthermore, it has been recognized that vaccination alone will not end the pandemic; access to treatment and testing is also necessary - especially in resource-poor parts of the world - and thus a

broad TRIPS waiver is necessary. Recently several UN human rights special procedures mandate holders issued letters to various States and corporations "concerning the unequal access to COVID-19 vaccines…[and] also address[ing] unequal access to medicines, health technologies, diagnostics, and health therapies within and between countries which affect negatively several human rights, particularly of individuals and people living in low- and middle-income countries. Such unequal access exacerbates inequality and discrimination and impedes the realization of a democratic and equitable international order."

The graphics below glaringly demonstrate the divide. (last updated 24 and 25 March 2022):





16. Despite widespread calls for international cooperation to ensure global access to vaccines, including by the WHO, leaders of a range of countries, the United Nations Secretary General (including those expressed at the Opening of the 76th United Nations General Assembly and the World Economic Forum in January 2022) and civil society (including the People's Vaccine Alliance, which grew out of this pandemic), the behaviours of the Respondent States and corporations headquartered within their borders are prolonging the pandemic. The failures of the Respondent States to take all available measures to increase global supply of and equitable access to vaccines and COVID-19 healthcare technologies (including ventilators, personal protective equipment, therapeutics and diagnostics) by, *inter alia*, supporting a TRIPS waiver and its implementation as requested by South Africa, India and supported by over 100 other countries has and is directly contributing to widespread and avoidable fatalities among a range of African, Asian, and Latin American/Caribbean countries, accentuating racial divisions within those countries as scarce health resources are not distributed equitably. This dynamic also further entrenches a new global north-south divide that defeats the objective of ensuring the inherent dignity and worth of every individual, and instead reinforces the gaps between a privileged elite and a mass of disenfranchised populations. Colonialism's historic consolidation of race as a fundamental factor in constructing the global political and economic order (*see, e.g.*, Sec. III, para 25-26) makes it such that the resulting hierarchy falls along racial lines..

17. This dynamic also contributes to a reversal of the development gains of much of the global south, as successive lockdowns and inability to control the virus have impacted the economic activity of these countries as well as education systems (especially where remote learning is largely not available). The Economist Intelligence Unit forecasts that vaccine inequity and delays in meeting global vaccination goals will cost those countries that fail to vaccinate 60% of their population by mid-2022 a staggering $2.3trn in losses over 2022-2025. Over that period, the Africa region will lose the most as a percentage share of GDP (3%), while Asia will sustain the deepest losses in

absolute number terms - $1.7trn or 74% of the total global losses due to vaccine inequity. The 2021 World Employment and Social Outlook Trends report by the International Labour Organisation indicates that "[f]ive years of progress towards the eradication of working poverty have been undone." South Africa's deepening unemployment rate of 34.9% is a clear example of this. In Latin America and the Caribbean, this report provides important data and findings about the pandemic's impact on economic growth in the region, and how differential capacity of states to respond to the pandemic have deepened asymmetries between developed and developing economies.

18. Efforts to encourage international cooperation to support a more equitable global response have proven unsuccessful, largely owing to high income countries' low-participation in cooperative initiatives. COVAX was a multi-institutional effort bringing WHO together with Gavi, the Vaccine Alliance and CEPI as a pillar of the Access to COVID-19 Tools (ACT) "to promote the fair and equitable allocation of COVID-19 vaccines that are procured or distributed to countries participating in the scheme" in a spirit of global solidarity. However, its flawed design and the failure of Respondent States and other global north countries to adequately participate in the effort (or even just meet their modest pledges of vaccine donations) have contributed to the ongoing access crisis. Much of the blame for "poor performance" can be laid at the feet of wealthy countries not stepping up early enough - for example, by October 2021, just 14 percent of the 1.8 billion doses pledged by global north/high-income countries had arrived in low- and middle-income countries.

19. COVAX developed a manufacturing and distribution scheme that perpetuates a colonial mindset vis-à-vis global south countries and their manufacturing potential. First, the "insufficient inclusion and meaningful engagement" of low- and middle-income countries in COVAX's high-level discussions and decision-making was a serious design flaw rooted in paternalism. Second, a failure to invest in expanding manufacturing infrastructure in Africa and choosing to concentrate so much manufacturing in a single facility in India have set back the timeline on developing global manufacturing capacity. Third, there are transparency issues: no agreements signed between COVAX and vaccine companies are available for public scrutiny. As a result, critical information, such as manufacturing and delivery schedules, are not publicly available. Fourth, by pretending and failing to offer a global solution to vaccine production and distribution, COVAX has taken away the attention and global support needed for other helpful measures, such as the TRIPS waiver and the sharing of vaccine technology and know-how with global south manufacturers.

20. To make matters worse, there is no mechanism in the global governance addressing the COVID-19 pandemic to prevent and mitigate the damage caused by the hoarding behaviour of high-income countries. For example, even COVAX allows high-income countries in the global north to order vaccines from its portfolio and there is no mechanism to mitigate the bilateral procurements between those same countries and vaccine companies. As a result, high-income countries have drained the majority of vaccine supplies globally and caused the sharp inequity of vaccine distribution in low- and middle-income countries.

21. In addition to hoarding vaccines, high-income countries have also stockpiled initial manufacturing supplies of monoclonal antibodies, molnupiravir, and nirmatrelvir +

ritonavir. As a key example, Pfizer, patent holder on the most promising outpatient antiviral, nirmatrelvir + ritonavir, has sold 30 million courses of treatment - all of its first half of 2022 doses - to a handful of rich countries, including 20 million to the United States. In contrast, it has only committed "up to" four million courses of treatment to UNICEF to supply 95 countries with 53% of the world's population. Although it has indicated a further willingness to supply an additional six million courses of treatment to low- and middle-income countries, this quantity is grossly disproportionate to need. Throughout the course of the pandemic, high-income countries have tested their populations hundreds of times more frequently than low-income countries and ten times more frequently than middle-income countries.

22. Besides blocking the TRIPS waiver (or its implementation), hoarding global supplies of vaccines, treatments and diagnostics, and refusing to mandate that nationally-based companies share relevant technologies, the Respondent States' acts and omissions have exacerbated the inequality and inequity between the global north and global south, and deepened racial discrimination rooted in colonialism.

23. Notably, though they have had ample time and opportunity, Respondent States have not engaged in the WHO-organised COVID-19 Technology Access Pool (C-TAP), a voluntary mechanism for the open sharing of knowledge, intellectual property and data on COVID healthcare technologies. The pharmaceutical corporations based in the Respondent States that hold intellectual property monopolies over such technologies have also failed to participate in C-TAP.

24. In some instances, pharmaceutical companies have entered into voluntary licences bilaterally or with the Medicines Patent Pool, see, e.g., Gilead (remdesivir), Merck (molnupiravir), and Pfizer (nirmatrelvir + ritonavir). In each instance, however, the companies have maintained their monopoly rights in high-income countries and many middle-income countries containing nearly half the world's population. The tiered prices that the companies insist on charging in excluded middle income countries are disproportionately high. For example, Merck charged Thailand $300 per course of treatment for molnupiravir, approximately 40% of its U.S. price of $712. Similarly, Pfizer charged $250 per course of treatment in Panama, nearly 50% of its $530 price in the U.S. Both these medicines are likely to eventually have manufacturing costs of less than $20 per course of treatment.

25. We appeal to the *Committee for the Elimination of All Forms of Racial Discrimination* to (i) consider this matter under its Early Warning and Urgent Action procedure, (ii) examine the presented evidence accepting its urgency and; (iii) issue a decision to compel the Respondent States to take five specific actions that can address this matter with alacrity, mindful that their failures to do so contribute to "deepening racialized discrimination rooted in slavery and colonialism." We make this appeal to the Committee as we believe it is uniquely positioned, and indeed compelled as we discuss below, to call out the disparate impact of unequal global access to COVID-19 vaccines, treatment, diagnostics and other healthcare technologies on people of colour both within states and between states in the global north and the global south. It is of utmost importance that the Committee hold Respondent states-parties accountable for their failure to urge companies housed within their borders to share technology and know-how, in effect contributing to a retrenchment of divisions between the global north and the global south.

26. These divisions must not be analyzed in a colour-blind manner, along high-income and low-income country lines. The income status of countries across the world have their roots in a global political and economic order shaped by colonialism. As the UN Special Rapporteur on Contemporary forms of Racism, Racial Discrimination, Xenophobia and Racial Intolerance stated in her 2019 thematic report, these violations are accentuated due to:

    (a) The historic racial injustices of slavery and colonialism that remain largely unaccounted for today, but which nevertheless require restitution, compensation, satisfaction, rehabilitation and guarantees of non-repetition; and

    (b) The contemporary racially discriminatory effects of structures of inequality and subordination resulting from failures to redress the racism of slavery, colonialism and apartheid.

    The present condition of global COVID-19 vaccine and healthcare inequity is yet another consequence of the unaddressed vestiges of these past historic racial injustices. The UN-adopted Durban Declaration and Programme of Action underscored this analysis by acknowledging colonialism's role in producing racism and "contributing to lasting social and economic inequalities in many parts of the world today."

27. In August 2020, the Committee issued a statement in which it availed itself for consideration of petitions of this kind using its Early Warning and Urgent Action procedure. The statement acknowledged the disparate impact the pandemic had on marginalized groups vulnerable to racial discrimination, owing to their socioeconomic status, lack of access to basic goods, services and infrastructure, and other factors that contribute to higher rates of infection and mortality. As it noted,

    > The pandemic thereby exposes and further deepens structural inequalities affecting vulnerable groups protected under the Convention, based on entrenched structures and practices of discrimination and exclusion. It furthermore has a significantly disparate socio-economic impact on those groups and minorities, in particular with regard to housing, employment and education as well as economic security in general.

    Over one and a half years since that statement, we make this appeal to the Committee to call upon Respondent States to "respect, protect and fulfil their human rights obligations" and take immediate action as outlined in the Remedies section below. We believe it is imperative to act urgently in anticipation of upcoming talks as negotiations on a potential TRIPS waiver continue between member states of the WTO.

II. Petitioners

28. We are a consortium of organisations from the global north and global south working collaboratively for human rights and development globally, including organisations headquartered or based in the Respondent States. We share a collective belief that the power of legally binding human rights principles, when translated into domestic legal systems, upheld by international law mechanisms, and disseminated through education at all levels, can transform global societies, promote equality of opportunity and dismantle the structural racial discrimination that is unfortunately characteristic between and within most states on the planet. We see the efficacy of human rights law

and institutions at international, regional, sub-regional and national level as key to enabling the full realisation of human potential, diffusing tensions and contributing to the creation of a sustainable and harmonious future.

29. The petitioners organisations and coordinating networks have members in both the Respondent States and the global south. The following organisations are jointly submitting this petition:

(i) **African Alliance** was founded as a queer-led and fully African staffed non-profit organization to strengthen the understanding and practice of Feminist and Pan Africanism Principles through a rights-based approach. The organisation provides consultative services along a broad skill set that includes advocacy, research, evaluation, strategy, and media. The African Alliance deploys its work through global partnerships and currently chairs the African work of the People's Vaccine Alliance.

(ii) **Center for Economic and Social Rights (CESR)** is an international nongovernmental organisation that fights poverty and inequality by advancing human rights as guiding principles of social and economic justice. Working in collaboration with partners around the world, CESR uses international human rights law as a tool to challenge unjust economic policies that systematically undermine rights enjoyment and thereby fuel inequalities.

(iii) **Centro de Estudios Legales y Sociales (CELS) -** The Center for Legal and Social Studies is an Argentine human rights organisation based in Buenos Aires. It was founded in 1979 during the last military dictatorship. It promotes the protection of human rights and their effective exercise, justice and social inclusion – both nationally and internationally. CELS' actions are aimed at shoring up the democratic State, public policy advocacy, expanding the effective exercise of rights, supporting victims and the search for justice.

(iv) Global South Vaccine Equity Coalition coordinated by the **Campaign Against Racism of Equal Health**.

(v) **Initiative for Social and Economic Rights (ISER)**, established in 2012, is an independent, not-for-profit human rights organisation focused on ensuring social and economic justice for all by promoting the effective understanding, monitoring, implementation and realisation of economic and social rights in Uganda.

(vi) **Minority Rights Group** is a London-based international non-governmental organisation working to secure the rights of ethnic, religious and linguistic minorities and indigenous peoples worldwide, and to promote cooperation and understanding between communities. MRG works with over 150 organisations in nearly 50 countries. MRG has consultative status with the United Nations Economic and Social Council, observer status with the African Commission on Human and Peoples' Rights, and is a civil society organisation registered with the Organization of American States.

(vii) **Oxfam International** - is a global network of Non-Governmental Organisations with a global headquarters in Nairobi, Kenya, and with Affiliates and offices in many countries.

(viii) **Treatment Action Campaign** is a membership-based activist organisation with 182 branches across South Africa that seeks to ensure the realisation of the right of access to health care services. It is widely acknowledged as one of the most important civil society organisations active on HIV in the developing world. The TAC's work now extends beyond HIV to access to medicines, health system

monitoring and reform and sexual and reproductive health and rights, among others. The organisation works primarily in South Africa and partners with other organisations in Africa and across the world.

(ix) **Women's Legal Centre (WLC)** is an African feminist legal centre that advances women's rights and equality through strategic litigation, advocacy, education and training. The Centre has a vision of women in their diversity in South Africa who enjoy equal and substantive access to their rights, being free from violence, empowered to ensure their own sexual health and reproductive rights, free to own their own share of property and resources, having a safe place to stay, access to work in a safe and equal work environment. The WLC was founded in 1998 and remains uniquely placed as the only dedicated women's rights and feminists legal centre of its kind in South Africa. Our programmatic work and focus areas are shaped by the women who seek assistance from us.

The petition was prepared with the support and coordination of the **Global Network of Movement Lawyers, housed at Movement Law Lab**, **Section 27** and the **secretariat of ESCR-Net - International Network for Economic, Social and Cultural Rights**. Several of the petitioning organisations are members of these networks.

III. Admissibility Under the Early Warning and Urgent Appeal Procedures

30. We are mindful that the Early Warning and Urgent Appeal was set up to consider matters that meet thresholds of urgency as outlined in *Guidelines for the Early Warning and Urgent Action Procedures* Annual Report A/62/18, Annexes, Chapter II[2] (henceforth "The Guidelines"). We also submit this petition mindful of the Committee's jurisprudence for decisions concerning situations of, *inter alia*, large-scale internal displacement and refugee flows linked to racial discrimination, land encroachment on Indigenous Peoples, exploitation of natural resources and infrastructure projects, patterns of escalating racial hatred and violence, racial discrimination as evidenced in social and economic indicators, ethnic tensions, racist propaganda and appeals to racial intolerance, as well as the lack of an adequate legislative basis for the definition and criminalization of all forms of racial discrimination. We particularly note the common thread among such decisions being that the threats identified pose irreparable threats to people of colour, Indigenous and tribal Peoples. While our petition is directed towards addressing remedies that would benefit the whole populations of states, rather than a specified segment, we argue that the equitable availability and distribution of vaccines and other COVID-19 healthcare technologies would have a specific effect on communities of concern who would otherwise be beyond the purview of state policy due to entrenched neglect and bias that becomes accentuated at times of scarcity.

31. We also note that decisions taken by the Committee have included specific requests for action as set out in the Guidelines, including the provision of specific information on the situation under consideration and the adoption of specific measures by the State party to remedy the situation in full compliance with the Convention. We note with satisfaction that the Committee's August 2020 statement and general thrust of decisions include detailed recommendations to States parties to halt further human rights

[2] As adopted at the Committee's 71st session in August 2007.

violations, to initiate a dialogue with victims of racial discrimination, and to seek technical assistance and advisory services from the Office of the High Commissioner for Human Rights. We seek such an outcome in our petition, including, *inter alia*, greater international cooperation by the Respondent States, with those states complying with their obligations to do all within their power to fully realize human rights without racial discrimination of any kind, including, in the case of a pandemic, by supporting the comprehensive TRIPS waiver as well as its implementation and enforcement, and mandating pharmaceutical company technology transfers in order to ensure maximum equitable global access to COVID healthcare technologies. The only way out of this discriminatory access crisis is to enable self-reliance and sustainable supply production in the global south, facilitated by technology transfer and sharing of know-how.

32. In addition, as in previous decisions, we petition the Committee to use its good offices and technical assistance to draw attention to the plea made by the United Nations Secretary General for greater solidarity and cooperation in global vaccine roll-out, including, through support for the TRIPS waiver--along with the recent pleas of several UN Special Procedures Mandate Holders--to prevent further deterioration of the situation and to increase assistance to the victims. This would necessarily accentuate and strengthen efforts already underway by various United Nations organs to provide humanitarian assistance. However, reminding Respondent States of the extent to which their actions accentuate racialized divisions, and their obligation to take specified actions in support of the *erga omnes* obligation against racial discrimination would add ballast and weight to these efforts.

33. In line with the Guidelines, we submit that the actions and omissions we allege by the Respondent States meet the following indicators for the early warning procedure:

    (i) Presence of a significant and persistent pattern of racial discrimination, as evidenced in social and economic indicators (Indicator a);
    (ii) Adoption of new discriminatory legislation (Indicator c);
    (iii) Segregation policies or de facto exclusion of members of a group from political, economic, social and cultural life (Indicator d);

    Conscious that the Committee acts under this procedure when it deems it necessary to address serious violations of the Convention in an urgent manner, we draw attention to the continued death tolls among countries with a low vaccination rate, as a **direct consequence of the actions and omissions of the Respondent States** in:

    (i) failing to support a TRIPS waiver and its implementation and engage in good faith negotiations of a waiver text that is substantially in line with the request from South Africa, India and at least 62 states from the global south (indicators a, c, and d);
    (ii) abusing their dominance in the vaccine, therapeutics and testing market by acquiring and hoarding supplies that are urgently needed elsewhere (indicator d);
    (iii) failing to cooperate internationally by not taking measures[3] that would compel their pharmaceutical corporations to make the necessary technology,

[3] We submit that legislative and policy adoptions as well as omissions constitute legal activity for the purposes of indicator c.

> know-how and data widely available to increase democratised production and access to life-saving COVID-19 healthcare technologies worldwide (indicators c and d); and
> (iv) adopting resolutions or positions to oppose the TRIPS waiver request (e.g., the Swiss Parliament's vote not to support the waiver) (indicator c).

34. It is important to note, in this regard, that the International Convention for the Elimination of All Forms of Racial Discrimination (ICERD) guarantees at issue do not textually or otherwise territorially limit the corresponding human rights obligations of the Respondent States. This is congruent with the Committee's own interpretations, including as to the human rights duties of States Parties to regulate business activities with extraterritorial impacts, as exemplified, for instance, by Concluding Observations urging Canada to take measures to prevent transnational corporations registered in that State from engaging in acts that would negatively impact the rights of indigenous people abroad. (*See, e.g.*, Report of the Committee on the Elimination of Racial Discrimination, UN Doc. A/62/18 (2007), para. 78; Concluding observations on the combined nineteenth to twentieth periodic reports of Canada, CERD/C/CAN/CO/19-20 (2012), para. 14; Concluding observations on the combined twenty-first to twenty-third periodic reports of Canada, CERD/C/CAN/CO/21-23 (2017), para. 22). The Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights reinforce this point, as do numerous UN, scholarly, and civil society pronouncements. Furthermore, as the International Court of Justice stated in a CERD dispute between Georgia and Russia:

> Whereas the Court observes that there is no restriction of a general nature in CERD relating to its territorial application; whereas it further notes that, in particular, neither Article 2 nor Article 5 CERD, alleged violations of which are invoked by Georgia, contain a specific territorial limitation; and whereas the Court consequently finds that these provisions of CERD generally appear to apply, like other provisions of instruments of that nature, to the actions of a State party when it acts beyond its territory.[4]

35. The present global pandemic also gives rise to a scenario in which the rights of both persons within Respondent States, with high vaccination rates, and in low- and middle-income countries, with low vaccination rates, are jeopardised by the inequitable international response to COVID-19. As the virus mutates, new variants emerge such as the highly contagious Delta and Omicron variants, and spread more quickly through unvaccinated populations than populations with high vaccination rates; thus, widespread and international vaccination efforts are key to effectively addressing the pandemic in the long term and doing so in compliance with human rights obligations. As the high case rates since the emergence of the Omicron variant show, it is also crucial that states have access to adequate testing and treatment supplies to control the spread of the virus. The harms and risks posed by novel virus variants to persons in

[4] International Court of Justice, Order of 15 October 2008, Case Concerning Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Request For The Indication Of Provisional Measures, para. 109: https://www.icj-cij.org/public/files/case-related/140/140-20081015-ORD-01-00-EN.pdf. *See also*, International Court of Justice, Advisory Opinion, Case Concerning the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, 9 July 2004, paras. 109-113: https://www.icj-cij.org/public/files/case-related/131/131-20040709-ADV-01-00-EN.pdf.

both the Respondent States and in the global south further exacerbate the forms of discrimination described throughout this petition, given the already noted disproportionate impact of the pandemic on people of colour, both between countries globally and within countries, including the Respondent States (for instance, the disproportionate impact of the pandemic on racial and ethnic minorities in the United States).

36. The consequences of these actions are a violation of the spirit of the drafters of the ICERD. They create the basis for accentuated violation of the rights of people of colour that fall under the definition of Article 1 (1), constituting "exclusions" and "restrictions or preferences" on the basis of the over-privileging of their own citizens, which have the effect of "…nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life." While we accept that the Convention permits exclusions or restrictions made by the State Party in distinguishing between its citizens and non-citizens as provided by Article 1(2), we argue that this needs to be tempered against the responsibility of the Respondent States to global human rights and the elimination of all forms of racial discrimination. Further we argue that the failures we highlight in this petition (failing to support a temporary TRIPS waiver - or its implementation - that would ease IP restrictions in order to increase global production of life-saving COVID healthcare technologies, including vaccines, diagnostics and therapeutics; not mandating corporations within their jurisdictions to promote global access to these technologies via non-exclusive licensing to multiple manufacturers and the timely sharing of technology, know-how and data in support of a global effort to end the pandemic; and supporting policies that allow for acquisition and hoarding of vaccines disproportionately) do not fall within the paradigm of distinguishing between citizen and non-citizen as intended by the drafters or the Committee's interpretations, as the pandemic presents a scenario that is transnational in nature, where states are interdependent in the protection of rights: to preserve the rights of a "citizen" within one state, states must take measures to preserve the rights of people in all states.

37. Vaccine inequity and other inequities in access to COVID technologies between citizens of different countries do amount to a form of racial discrimination as contemplated by ICERD for at least two reasons. First, both the Durban Declaration and the pronouncements of the Special Rapporteur on Racial Discrimination emphasise how racism manifests as a global system privileging those who belong to former colonial powers to the detriment of those who belong to formerly colonised states. This is because slavery and colonialism were global systems whose effects are continued to be felt today. Thus, when considering whether conduct amounts to "racial discrimination" under the Article 1 definition in ICERD, one should consider whether the conduct in question replicates colonial-era racial hierarchies formed during the era of slavery and colonialism. Data on vaccination rates as well as the other socio-economic impacts of the pandemic which are cited throughout this petition demonstrate that the negative impact of the pandemic in terms of both lives and livelihoods has been felt disproportionately by those who live in formerly colonised territories such as nations in Africa, Latin America and Asia. Secondly, both the jurisprudence of the CERD, General Recommendation No. 34 (2011) and thematic reports by the Special Rapporteur on racism are clear that ICERD covers both de jure and de facto – that is to say indirect - discrimination. In her 2019 report, in relation to General Recommendation

No. 34, Special Rapporteur Achiume states in paragraph 47:

> Equality in the international human rights framework is substantive, and requires States to take action to combat intentional or purposeful racial discrimination, as well as to combat de facto or unintentional racial discrimination….The Committee emphasizes the fact that the Convention applies to purposive or intentional discrimination, as well as discrimination in effect and structural discrimination.

Thus, it matters not whether the Respondent States (who, including those members of the TRIPS waiver-opposing European Union, largely align with former colonial powers) had the intention to discriminate against the impacted individuals. What matters is that the *effect* of their conduct maintains and reproduces patterns of racial discrimination which are inherited from the colonial era. It is therefore our view that the conduct of the Respondent States cannot be regarded as a mere distinction between poor countries and rich countries but as a form of racial discrimination which sustains racial hierarchies at a global level.

38. Respondent States': i) failure to support the full temporary TRIPS waiver; ii) hoarding of COVID vaccines and other healthcare technologies; iii) failure to compel corresponding technology transfers; and iv) adoption of anti-waiver stances; (see paragraph 34) constitute "distinction, exclusion, restriction or preference" within the meaning of ICERD Article 1, as acts and omissions. As documented in this submission, this conduct disproportionately harms the lives, health, and other interests of persons across much of the global south along protected grounds of identity enumerated in Article 1. In so doing, the conduct is "nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms," within the meaning of Article 1, particularly the rights to life, health, benefit from scientific progress, among others.

39. The actions of the Respondent States violate the provisions of Article 2, by not pursuing all appropriate means without delay "…to eliminating racial discrimination in all its forms and promoting understanding among all races." Instead the omissions and actions cumulatively have the effect of nullifying the quest for global racial equality at a time of grave uncertainty, especially in its failures to ensure that it stays within the obligation to conform with the spirit of article 2. Also, in keeping with Article 2 (c) the Respondent States are failing to take effective measures "…to review governmental, national and local policies, and to amend, rescind or nullify any laws or regulations which have the effect of creating or perpetuating racial discrimination wherever it exists." The Convention also urges in article 2(d), each State Party "…to prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization." The Committee's previous pronouncements in relation to its scrutiny of Canada in, notably its recommendation (CERD/C/CAN/CO/19-20, para. 14) has also determined that this obligation of the State party to ensure access to justice through judicial and non-judicial remedies also arises in cases of violations of rights of persons by transnational corporations registered in Canada (and by implication the other respondents), operating abroad.

40. The remedies we seek from the Committee are in line instead with the obligation on state parties articulated in Article 2(2) which calls on States party to the Convention to take "social, economic…special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them,

for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms." Beside the health and death tolls from the pandemic in many Asian, African and Latin American countries, the failure to acquire and widely distribute vaccines means that pandemic prevention-oriented measures (e.g. periodic lockdowns) must continue, significantly curtailing economic activity, negatively impacting access to education, fuelling housing insecurity, deepening inequality based on type and formality of employment, and otherwise pushing these states into further poverty and curtailing the rights of individuals.

41. The acts and omissions of the Respondent States, especially in failing to recognise the need for a comprehensive global approach (accompanied by implementing policies) to pandemic elimination in the spirit of moral and pragmatic considerations contributes to a violation of article 3, in promoting segregation and the adoption of a differentiated approach towards communities based both on their nationality and the places of origin of their vaccination. This contradicts the obligation to undertake, prevent, prohibit and eradicate all such practices.

42. The acts and omissions of the Respondent States are inconsistent with their obligation under article 3 to "prevent, prohibit and eradicate" all pratices of racial discrimination particularly "racial segregation and apartheid." This is so because the conduct of the Respondent States has contributed to the inequitable distribution of healthcare technologies for the prevention, containment and treatment of COVID-19 which entrenches the historical racial disparities between the global north and global south wherein people who reside in formerly colonised states suffer the brunt of the pandemic. Be it purposefully or not, the conduct of the Respondent States reinforces colonial forms of racial subordination which is inconsistent with their *erga omnes* obligation to eliminate all forms of racial discrimination. It matters not furthermore whether the Respondent States intended to bring about the said racial discrimination seeing as ICERD prohibits both *de jure* (direct) and *de facto* (indirect) discrimination and requires states parties to eliminate structural discrimination and ensure substantive racial equality irrespective of one's race; national, social or ethnic origin; colour or caste. Furthermore, ICERD endorses an intersectional view of discrimination which prohibits discrimination based on the aforementioned grounds as they intersect with gender, sexual orientation, disability, migration status and so on. In the petitioners' view, the conduct of the Respondent States is manifestly inconsistent with these obligations, particularly the obligation to eradicate structural racial discrimination, segregation and all forms of apartheid.

43. Together, these violations linked to articles 1-3 of ICERD create a basis and imperative for the CERD Committee to act.

IV. Specific Acts and Omissions of State Parties

44. The following four acts/omissions by the Respondent States are contributing to the situation that is the subject matter of this appeal:

    a. Domination of the market for COVID-19 healthcare technologies, including vaccine, therapeutics, and diagnostic test hoarding;
    b. Omission in engaging with, persuading, compelling, and/or failing to implement the waiver of intellectual property rights initially proposed (as

revised in May 2021) by India and South Africa and instead proposing an insufficient and misleading draft text, as well as similar omissions with respect to the enforcement of technology transfers concerning critical COVID-19 healthcare technologies of corporations headquartered in their jurisdictions;

c. Failure to act in a spirit of global solidarity to ease the structural discrimination traceable to colonialism and imperialism in the manufacture, availability and distribution of vaccines, therapeutics and other COVID-19 healthcare technologies; and
d. Inadequate attention and failure to develop policies to measure and address the discriminatory patterns of availability and take up of vaccines within their own countries, including racial and other intersecting discriminations as to gender, sexual orientation, disability, migration status or language preference.

All of Respondent States' conduct is exacerbated by their ongoing and consequential failure to support, implement or enforce the comprehensive TRIPS waiver proposal, which could alter the existence, prevalence, and intensity of the failures listed above.

V. Impact of Such Action

45. Under the Committee guidelines for an urgent appeal, "the Committee shall assess their significance in light of the gravity and scale of the situation, including the escalation of violence or irreparable harm that may be caused to victims of discrimination on the grounds of race, colour, descent or national or ethnic origin."

46. Accordingly, the impact of each of these is stark as outlined below, and has the effect of nullifying and impairing the long-standing battle for the elimination of all forms of structural discrimination. Rather each act/omission in its own right contributes to the construction of systems and mindsets that can cause irreparable and long-term damage that go beyond the fight against racial discrimination, to impacting global solidarity, the urgent need to act globally to solve global problems such as climate change, and to foster a spirit of collaboration in achieving the Sustainable Development Goals (not least the Leave No One Behind Principle) to which each of the State Parties have contributed much.

47. In **acquiring a significant proportion of the vaccines** available the Respondent States have depleted supply available to poorer countries at a time of great need. The freedom of vaccine availability in the Respondent State compared to that in other States is stark, and the preparation for a third booster jab for many or all residents reflects a lack of solidarity that defeats the object and purpose of global cooperation. Further in over-acquiring and hoarding vaccines, sometimes past reasonable expiry dates, they contribute to wastage of scarce resources that could save lives in large numbers elsewhere.

48. Research and development towards the vaccine was an urgent and collaborative exercise between the world's scientists. Much of this was undertaken via the Respondent States' investing in science using public money. In addition, ongoing research and development breakthroughs as the virus evolves is not possible without the supportive policies, funding and participation in various clinical trials by low- and middle-income countries and people living in vulnerable situations. Yet the formulas, technology and know-how on how to produce vaccines, therapeutics, diagnostics and

other life-saving COVID-19 healthcare technologies have been tightly held by pharmaceutical corporations who have made significant profit out of these technologies' commercial exploitation. The profits from this activity have more than fulfilled the risk of the early investment, and the continued profit from this process is inhumane and constitutes unjust enrichment. In **failing to compel corporations to release vaccine formulas and other know-how and advance efforts to ramp up manufacturing capabilities globally**, the Respondents are contributing to retrogressive, paternalistic steps that entrench rather than eliminate racial discrimination, a concurrent violation of their obligations to uphold economic, social and cultural rights. As the Committee has found in its work, States' obligations extend to violations that are committed by corporations based in their jurisdictions that have an impact abroad. This responsibility is heightened when the product itself has been researched and developed at the behest of state investment and public support particularly through clinical trials conducted in low- and middle-income countries.

49. The Respondent States **have paid inadequate attention to vaccine inequities in their own State**. They have **failed to collect sufficient disaggregated data in terms of fatalities, vaccine availability, to provide education in indigenous and minority languages**, and to assess the extent to which vaccine roll-out and take-up have addressed the issue of eliminating all forms of racial discrimination within their countries.

50. Respondent States have actively opposed the TRIPS waiver request initially made by South Africa and India in October 2020 and later revised in May 2021, or, in the case of the United States, belatedly supported only a narrow waiver as to vaccines alone and failed to implement other available means to enforce intellectual property transfers, thus delaying the process of knowledge and technology transfer that could have increased global production and thereby increased global supply of vaccines and COVID-19 healthcare technologies. Respondent States are instead proposing half measures that betray their choice to privilege the intellectual property monopolies of a handful of corporations over the lives, health and livelihood of people in the global south.

VI Possible Measures to be Taken under the Procedure

51. To formulate our plea for remedies we are mindful of Section D of the Guidelines, and can attest that the information and references contained in this document are from officially validated sources of materials including by other United Nations bodies, Special Procedures mandate holders, other intergovernmental organisations, medical and health professionals and civil society organisations of the highest integrity.

52. Our request for a decision, outlined in the section below, aims for specific recommendations for action at the State parties concerned which are in line with communications bythe following Special Procedures mandate holders named in the Guidelines: the Special Rapporteur on minority issues, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.

53. In addition, our petition draws on materials already produced by the following Special Procedures mandate holders: the Special Rapporteur in the Field of Cultural Rights; Special Rapporteur on the Right to Education; the Independent Expert on Debt and Human Rights; the Working Group of Experts on People of African Descent, the Independent Expert on the Enjoyment of Human Rights by Persons with Albinism, the Working Group on Business & Human Rights; Special Rapporteur on the promotion and protection of freedom of opinion and expression; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on Adequate Housing; Independent Expert on Human Rights and Solidarity; the Independent Expert on the Enjoyment of All Human Rights by Older Persons; the Special Rapporteur on Extreme Poverty and Human Rights; and the Special Rapporteur on Contemporary Forms of Slavery including its Causes and Consequences. Each of these mandate holders have focused their work since 2020 on the impact of the pandemic and their many pronouncements point to the extent and scope of the pandemic on the enjoyment of human rights. They also point to systemic and widespread impacts, many of which are likely to persist into being long-term and systemic reinforcing a global north-south divide that has been drawn on racialized lines.

54. The subject of the deepening inequalities of the pandemic in various parts of the globe was also the subject of the opening remarks by the United Nations High Commissioner for Human Rights Michelle Bachelet, on the 28th of September 2021. Ms Bachelet urged:

> Extreme poverty and hunger are rising. COVID-19 has led to the first rise in extreme poverty in two decades: an additional 119 to 124 million people were pushed back into extreme poverty in 2020, and the number of people living with food insecurity rose by 318 million, according to FAO – amounting to an unprecedented 2.38 billion people. Vital gains are being reversed – including for women's equality and the rights of many ethnic and religious minority communities and indigenous peoples. Cracks in the social fabric of our societies are growing wider. And the huge gaps between rich and poorer countries are becoming more desperate and more lethal.
>
> In urging powerful action, Ms. Bachelet articulated the spirit behind our plea for remedies stating:
>
> > …lesson one of COVID-19 is that embedding human rights in all decision- making processes make us safer and stronger. They are not only nice to have – they are a pre-condition to build inclusive, stable and sustainable economies as well as societies. We must ensure that States' economic recovery plans are built on the bedrock of human rights and in meaningful consultation with civil society. Moreover, responsible businesses conduct must be an integral part of building back better.
> >
> > There must be steps to uphold universal health care, universal social protections and other fundamental rights to protect societies from harm, and make all communities more resilient.
> >
> > …

Lesson two: we need joint action. To act effectively, States must act together, in solidarity, to fairly distribute COVID-19 healthcare technologies and help each other combat the impacts of COVID-19.

55. On 14 October 2021, UN Special Procedures mandate holders - namely, Working Group on the issue of Human Rights and Transnational Corporations and other Business Enterprises; the Special Rapporteur on the right to development; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Independent Expert on the promotion of a democratic and equitable international order; the Independent Expert on human rights and international solidarity and the Special Rapporteur on extreme poverty and human rights - sent 43 letters to pharmaceutical companies, individual states, the European Union and the WTO and called for, among other things, "immediate collective action to ensure equal and universal access to COVID-19 vaccines" including support for a temporary TRIPS waiver and an admonition against hoarding of vaccine supplies. In their public statement, they generally expressed concern over unequal access to COVID-19 vaccines and healthcare technologies, affirming, as stated above, "[s]uch unequal access exacerbates inequality and discrimination and impedes the realization of a democratic and equitable international order." Our petition echoes these concerns.

VII Remedies

56. With the urgent need to spur action by the Respondent States, and to fulfil their obligations within the Convention and the *erga omnes* obligation of non-discrimination in taking all measures to eliminate racial discrimination in the context of the roll-out and availability of the vaccines from the Respondent States to others, we urge the committee to:

(i) Conclude that (a) Respondent States must take action to protect people's lives over corporates' intellectual property by giving priority to the human rights to life and health of the global population and (b) Respondent States' domination of vaccine and COVID-19 healthcare technologies' availability, their acquisition and hoarding is a retrogressive step that will cause irreparable damage to the quest to eliminate all forms of racial discrimination;
(ii) Demand that the Respondent States immediately support, implement, and enforce the TRIPS waiver as requested by India and South Africa (and revised in May 2021) concerning COVID-19 healthcare technologies at the WTO and mandate corresponding technology and knowledge transfers enabling urgent diversification of production facilities, and thus, scaling up, of production;
(iii) Demand specifically that Respondent States not limit their actions to allowing compulsory licensing on patents, a hollow measure that overlooks other intellectual property barriers related to regulatory data and trade secrets and would force each country to individually and separately apply for compulsory licenses on each underlying technologies, components, raw materials, process and methods that are also protected;
(iv) Draw attention to structural discrimination in vaccine manufacture, availability and distribution emphasizing the long-term harm to the quest to eliminating racial discrimination; and
(v) Encourage states to collect disaggregated data on the use, availability and take up of vaccines, as well as education and outreach in indigenous or minority languages

within their countries to guarantee that there is no discrimination in access as to race or other intersecting identities.

(vi) Finally, we ask the Committee to kindly consider participating in the discussions, including by conducting an inquiry visit to the World Trade Organization with respect to the TRIPS Waiver, bringing data on the negative impact of the COVID-19 pandemic on racial equality and its particular consequences for racial and ethnic groups in the Global South. It is our view that these discussions should greatly benefit from the Committee's perspective.

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