



Joint Guidance Note on Equitable Access to COVID-19 Vaccines for All Migrants

The UN Committee on Migrant Workers (CMW), the UN Special Rapporteur on the human rights of migrants and the Office of the United Nations High Commissioner for Human Rights (OHCHR), the Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrant in Africa of the African Commission on Human and Peoples' Rights, the Special Representative of the Secretary General on Migration and Refugees of the Council of Europe and the Rapporteur on the Rights of Migrants of the Inter-American Commission on Human Rights have already warned that the COVID-19 pandemic is having serious and disproportionate impacts on migrants and their families and recommended to integrate migrants into national COVID-19 prevention and response plans and policies, including by ensuring that the provision of preventative measures is provided in a non-discriminatory manner¹.

The human rights experts that subscribe this document urge States to provide equitable access to COVID-19 vaccination to all migrants regardless of nationality, migration status or other prohibited ground of discrimination and remind States of their international obligations on the right to health and non-discrimination.

Fair distribution of the COVID-19 vaccines presents public health and human rights challenges. It has been recognized that given the scarcity of doses and the limited resources of many States, it is impossible to guarantee that everyone will have immediate access to a COVID-19 vaccine². Consequently, in the short term, the prioritization of access to vaccines by specific groups is unavoidable at the national level. Before this scenario, States should prioritize people for vaccination on the basis of individual medical needs and public health grounds, by establishing appropriate criteria that are in line with human rights standards and norms.³ The prioritization of vaccines delivery should not exclude anyone on the basis of nationality and migration status.

In the context of establishing criteria for vaccines prioritization, attention must be given to those migrants who are most exposed and vulnerable to the SARS-COV-2 due to social determinants of health, such as migrants in irregular situations, low-income migrants, migrants living in camps or unsafe conditions, in immigration detention, migrants in transit. The Special Rapporteur on the human rights of migrants has established that “a number of reports indicate that migrants may be more vulnerable to

¹ CMW and UN Special Rapporteur on the human rights of migrants, “Joint Guidance Note on the Impacts of the COVID-19 Pandemic on the Human Rights of Migrants”, 26 May 2020, page 2; OHCHR, “COVID-19 and the Human Rights of Migrants: Guidance”, 7 April 2020; African Commission on Human and Peoples' Rights, “449 Resolution on Human and Peoples' Rights as central pillar of successful response to COVID-19 and recovery from its socio-political impacts - ACH-PR/Res. 449 (LXVI) 2020”, 7 August 2020; and “Resolution 470 on the Protection of Refugees, Asylum Seekers and Migrants in the fight against the COVID-19 pandemic in Africa”, 3 December 2020; CoE's SRSG, “Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis. A toolkit for member States”, 7 April 2020. Within the European System of Human Rights, also see, European Committee of Social Rights, “Statement of interpretation on the right to protection of health in times of pandemic” 21 April 2020; and Council of Europe Committee on Bioethics (DH-BIO), “COVID-19 and vaccines: Ensuring equitable access to vaccination during the current and future pandemics”, 21 January 2021; and IACHR, Resolution 1/2020 “Pandemic and Human Rights in the Americas”, 10 April 2020; Resolution 4/2020 “Human Rights of Persons with COVID-19”, 27 July 2020; and “IACHR and its SRESCER Call on American States to Make Public Health and Human Rights the Focus of All their Decisions and Policies Concerning the COVID-19 Vaccine”, 5 February 2021.

² Cfr. CESCR, “Statement on universal and equitable access to vaccines for the coronavirus disease (COVID-19)”, E/C.12/2020/2, 15 December 2020, para. 5.

³ CESCR, “Statement on universal and equitable access to vaccines for the coronavirus disease (COVID-19)”, E/C.12/2020/2, 15 December 2020, para. 5; WHO SAGE values framework for the allocation and prioritization of COVID-19 vaccination, 14 September 2020, available at: https://apps.who.int/iris/bitstream/handle/10665/334299/WHO-2019-nCoV-SAGE_Framework-Allocation_and_prioritization-2020.1-eng.pdf?sequence=1&isAllowed=y; OHCHR, Human Rights and Access to COVID-19 vaccines, 17 December 2020, Key Message N. 5, available at: https://www.ohchr.org/Documents/Events/COVID-19_AccessVaccines_Guidance.pdf;

poor health by virtue of their often low socio-economic status, the process of migration and their vulnerability as non-nationals in the new country⁴. The prioritization of those migrants who are most exposed and vulnerable to the SARS-COV-2 due to social determinants of health was recently supported by the Committee on Economic, Social and Cultural Rights (CESCR)⁵ and the Strategic Advisory Group of Experts on Immunization of the World Health Organization⁶.

Migrants and their families face a range of obstacles in accessing a COVID-19 vaccination, including lack of access to information in a language they understand, costs, and legal, administrative and practical barriers. In the absence of effective firewalls between health and public services and immigration authorities, data collection and information sharing related to COVID-19 vaccinations may also further raise fears among migrants in an irregular situation.

In situations of fear and uncertainty, such as the current pandemic, migrants and minorities associated with migration can be particularly vulnerable to attitudes and behaviours that stigmatize and scapegoat them. Discriminatory public discourses may lead to the exclusion of migrants and fail the efforts to protect the whole population at large.

All migrants must have access to the vaccine regardless of their nationality and migration status and on an equal basis with nationals. As the UN High Commissioner for Human Rights held: “ensuring access to the vaccine is not only the right thing to do, it is in the interest of us all, for unless everyone is safe, no one is safe”⁷. If States decide not to comply with their international obligations leaving migrants and other marginalised groups without access to the vaccine, the risk of upsurges in the pandemic remains not only for those States but to all the world population. The

human rights experts praise the measures taken by several States to include migrants, regardless of their nationality and migration status, in their national COVID-19 response and recovery plans, especially those who have included migrants in their vaccination plans providing vaccines to migrants, and appeal to all countries to follow suit.

Health is a fundamental human right indispensable for the exercise of other human rights⁸, recognized in numerous international instruments⁹. It includes the obligation to provide, without discrimination, immunization against major infectious diseases as a means to prevent, treat and control epidemic and other diseases¹⁰. Accordingly, the CESCR has interpreted the obligation of provision of immunization against major infectious diseases occurring in the community and measures to prevent epidemic diseases as obligations of “comparable priority” with the core obligation to ensure the satisfaction of, at the very least, minimum essential levels of the right to health¹¹. Therefore, access to the vaccination is a human right¹².

States have the obligation to ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalised groups¹³, as interpreted by the CMW¹⁴ and the CESCR¹⁵. The CMW has held that article 28 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families must be read together with article 12 of the ICESCR. States have a duty to respect the right to health by ensuring that migrants have equal access to COVID-19 vaccine, regardless of their nationality and migration status.

In light of all of the above, the UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, the UN Special Rapporteur on the human rights of

⁴ Cfr. Report Special Rapporteur on the human rights of migrants, A/HRC/14/30, 16 April 2010, para. 23.

⁵ Cfr. CESCR, “Statement on universal and equitable access to vaccines for the coronavirus disease (COVID-19)”, E/C.12/2020/2, 15 December 2020, para. 5. See also CESCR, General Comment No. 25 (2019), para. 16 - “States parties should direct their own resources and coordinate actions of others to ensure that scientific progress happens and that its applications and benefits are distributed and are available, especially to vulnerable and marginalized groups

⁶ Cfr. WHO, “Roadmap for prioritizing uses of COVID-19 vaccines in the context of limited supply. An approach to inform planning and subsequent recommendations based upon epidemiologic setting and vaccine supply scenarios”, 13 November 2020.

⁷ OHCHR, “Human rights and access to COVID-19 vaccines”, 17 December 2020, page 1.

⁸ CESCR, GC No. 14 (2000), “The right to the highest attainable standard of health (art. 12 ICESCR)”, para. 1.

⁹ Among others, art. 25.1 Universal Declaration of Human Rights; art. 12.1 ICESCR, art. 5 (e)(iv) International Convention on the Elimination of All Forms of Racial Discrimination.

¹⁰ ICESCR, article 12 (c).

¹¹ Cfr. CESCR, GC No. 14 (2000), “The right to the highest attainable standard of health”, para. 44 (b) and (c)

¹² See OHCHR, “Human rights and access to COVID-19 vaccines”, 17 December 2020, page 1.

¹³ See, among others, Universal Declaration of Human Rights (art. 2), in the International Covenant on Civil and Political Rights (art. 2, para. 1; art. 26) and the International Covenant on Economic, Social and Cultural Rights (art. 2, para. 2)

¹⁴ Cfr. CMW, GC No. 2 on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2, 28 August 2013, para. 18.

¹⁵ Cfr. CESCR, General Comment No. 14 (2000), para. 34, 43(a); CESCR, Duties of States towards refugees and migrants under the International Covenant on Economic, Social and Cultural Rights, E/C.12/2017/1, 13 March 2017, para. 5-6

migrants, the Office of the United Nations High Commissioner for Human Rights, the Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrant in Africa of the African Commission on Human and Peoples'

Rights, the Special Representative of the Secretary General on Migration and Refugees of the Council of Europe and the Rapporteur on the Rights of Migrants of the Inter-American Commission on Human Rights urge States to:

- 1 Provide equitable access to COVID-19 vaccination for all migrants and their families on a non-discriminatory basis, regardless of their nationality and migration status.
- 2 Ensure that vaccine prioritization within countries takes into account the vulnerabilities, risks and needs of those migrants who are most exposed and vulnerable to the SARS-COV-2.
- 3 Adopt measures to overcome barriers, establish protocols that facilitate equitable access to vaccination for migrants, including those in irregular situations, and provide targeted outreach and provision of information among migrants in a language they understand and in formats they can access.
- 4 Enact firewalls between immigration enforcement and the provision of COVID-19 vaccination, in order to prevent fear or risk of reporting, detention, deportation and other penalties as result of migration status. Vaccine registration should not be used to collect nor share information about migration status. Communication messages and public information campaigns should make clear that migrants in irregular situations will not be penalized or targeted for immigration enforcement when seeking access to COVID-19 vaccination.
- 5 Avoid rhetoric and terminology that stigmatize and reinforce harmful narratives against migrants that may result in the exclusion of migrants and those in irregular situations from the public health response. Ensure public information and rhetoric regarding public health is inclusive of migrants.
- 6 Develop coordinated strategies and mechanisms of cooperation and assistance to guarantee universal and equitable access to vaccines for COVID-19 globally, and to take into special consideration those countries which due to economic or financial factors are facing obstacles to get vaccines for their populations, including migrants and their families.