



# General Assembly

Distr.: General  
13 April 2021

Original: English

---

## Human Rights Council

Forty-seventh session

21 June–9 July 2021

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

### **International solidarity in aid of the realization of human rights during and after the coronavirus disease (COVID-19) pandemic**

**Report of the Independent Expert on human rights and international  
solidarity, Obiora Chinedu Okafor**

#### *Summary*

This is the fourth report prepared for the Human Rights Council by the Independent Expert on human rights and international solidarity, Obiora Chinedu Okafor. In the present report, submitted pursuant to Human Rights Council resolution 44/11, the Independent Expert discusses how international solidarity in aid of the fuller realization of all categories of human rights has, or has not, been expressed by States and other actors in the context of the coronavirus disease (COVID-19) pandemic. He discusses the serious threats to the enjoyment of human rights posed by the pandemic and the measures put into place to control it. He articulates the moral and legal rationale for an international solidarity obligation, including in the context of the pandemic, discusses examples of gaps in the enjoyment of international solidarity and identifies and highlights positive expressions of such solidarity by States and non-State actors, including best practices.



## Contents

	<i>Page</i>
I. Introduction .....	3
II. The pandemic, and measures taken to contain it, as a threat to the enjoyment of all categories of human rights .....	5
A. Economic and social rights .....	6
B. Civil and political rights.....	8
III. The international solidarity imperative for the realization of human rights during and after the pandemic .....	12
A. The ethical rationale .....	12
B. The legal rationale .....	12
IV. Gaps in international solidarity in the context of the pandemic .....	13
V. Positive expressions of international solidarity for the realization of human rights during and after the pandemic .....	16
VI. Conclusions .....	20
VII. Recommendations .....	20

## I. Introduction

1. During the reporting period, the Independent Expert on human rights and international solidarity, Obiora Chinedu Okafor, presented his third thematic report to the General Assembly, in October 2020, in which he discussed the link between certain forms of contemporary populism and the enjoyment, or lack thereof, of human rights-based international solidarity (A/75/180). He thanks Costa Rica and Bolivia for their positive replies to his requests for visits and hopes to be able to undertake them as soon as possible, taking into account the current global pandemic and the consequential travel restrictions. He also thanks Malawi for its agreement in principle to accept such a visit and looks forward to agreeing upon a mutually convenient date. He humbly reminds other States about the need for positive replies to his requests to visit.

2. A novel coronavirus disease (COVID-19) has swept across the globe since its causative agent – first known as 2019 novel coronavirus (2019-nCoV), but currently designated as SARS-CoV-2 – was first identified on 7 January 2020.<sup>1</sup> On 11 March 2020, the World Health Organization (WHO) declared the COVID-19 outbreak a pandemic. As at December 2020, over a million lives had been lost, with the toll sadly continuing to rise, although the rise is expected to wane in significant measure by the last quarter of 2021, due to the ongoing deployment of several vaccines against the disease. Despite there currently being many more people recovering from the disease, there are increasing reports of long-term debilitating health effects for some of the recovered.

3. The COVID-19 pandemic and the measures taken to contain it have led to serious socioeconomic difficulties around the world. Nearly 90 million people are estimated to have now fallen into “extreme deprivation”.<sup>2</sup> Recent reports indicate that:

(a) “Quarantines, travel restrictions and [the] lockdown of cities have resulted in a significant reduction in demand and supply. Economic activities in transportation, retail trade, leisure, hospitality and recreation have been battered. [...] Public trust in the health response has direct and immediate economic effects”;<sup>3</sup>

(b) China is the only Group of 20 economy that is expected not to contract in 2020.<sup>4</sup> In smaller or weaker and more dependent economies, the economic slowdown has been even more severe, causing significant negative socioeconomic effects.<sup>5</sup> The pandemic, measures to control its spread and the resultant serious economic downturns have, in turn, seriously threatened or harmed the enjoyment by billions of people across the world of, among other things, the human rights to health, life, education, food, shelter, work, freedom of movement, liberty and freedom of assembly.<sup>6</sup>

<sup>1</sup> World Health Organization (WHO), “Novel coronavirus (2019-nCoV) situation report1”, 21 January 2020; and Jun Zheng, “SARS-Cov-2: an emerging coronavirus that causes global threat”, *International Journal of Biological Sciences*, vol. 16, No. 10. Available from [www.ncbi.nlm.nih.gov/pmc/articles/PMC7098030/#B10](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC7098030/#B10).

<sup>2</sup> International Monetary Fund (IMF), *World Economic Outlook: A Long and Difficult Ascent*, (Washington, D.C., IMF, October 2020), p. xiii.

<sup>3</sup> United Nations, “Shared responsibility, global solidarity: responding to the socioeconomic impacts of COVID-19”, March 2020, p. 8. Available from [www.un.org/sites/un2.un.org/files/sg\\_report\\_socio-economic\\_impact\\_of\\_covid19.pdf](http://www.un.org/sites/un2.un.org/files/sg_report_socio-economic_impact_of_covid19.pdf).

<sup>4</sup> See <https://news.cgtn.com/news/2020-10-13/World-GDP-to-drop-4-4-in-2020-IMF--UyNuoUIFIC/index.html>; and Organisation for Economic Co-operation and Development, “Unprecedented falls in GDP in most G20 economies in second quarter of 2020”, news release, 14 September 2020.

<sup>5</sup> IMF, *World Economic Outlook*, p. xi; and David Ndii, “The political economy of coronavirus: Dr. David Ndii speaks”, video, The Elephant, 1 April 2020. Available from [www.theelephant.info/videos/2020/04/01/the-political-economy-of-coronavirus-dr-david-ndii-speaks/](http://www.theelephant.info/videos/2020/04/01/the-political-economy-of-coronavirus-dr-david-ndii-speaks/).

<sup>6</sup> Obiora Chinedu Okafor, “International solidarity, human rights and life on the African continent ‘after’ the pandemic”, *Strathmore Law Journal*, vol. 5, No. 1. See also Inter-American Commission on Human Rights resolution 1/2020 of 10 April 2020, entitled “Pandemic and human rights in the Americas”.

4. While emphasizing the importance of human rights in shaping the response to the pandemic, in its resolution 44/2, the Human Rights Council underscored the central role of the State in responding to pandemics and other health emergencies and reaffirmed that emergency measures taken by States in response to the COVID-19 pandemic must be in accordance with States' obligations under applicable international human rights law.

5. Yet, in spite of the central role that individual States must play in that regard, "international public health security is both a collective aspiration and a mutual responsibility",<sup>7</sup> thereby highlighting the importance of international cooperation, in particular during times of health emergencies and pandemics, on the basis of mutual respect.<sup>8</sup> Such international cooperation, an aspect of international solidarity,<sup>9</sup> which is aimed at the fuller realization of human rights, is required in fulfilment of certain international legally binding obligations assumed by most States.<sup>10</sup> States are required to deploy their maximum available resources, individually and in cooperation, to ensure the enjoyment of social and economic rights, such as the right to health, in their territories,<sup>11</sup> as well as not to prevent such solidarity among their nationals.<sup>12</sup> There is absolutely no doubt that Articles 55 and 56 of the Charter of the United Nations, requiring all States to take joint and separate action in cooperation in order to achieve the human rights goals of the United Nations, impose a binding legal obligation on States to cooperate, including in the current regard.<sup>13</sup>

6. The mandate holder and his predecessor subscribe to, and work with, the definition of international solidarity contained in the draft declaration on the right to international solidarity,<sup>14</sup> wherein it is stated that international solidarity is the expression of a spirit of unity among individuals, peoples, States and international organizations, encompassing the union of interests, purposes and actions and the recognition of different needs and rights to achieve common goals.<sup>15</sup> In the draft instrument, the main components of international solidarity are also identified, namely: preventive solidarity, through which stakeholders act to proactively address shared challenges; reactive solidarity, collective actions of the

<sup>7</sup> WHO, *The World Health Report 2007: A Safer Future* (Geneva, WHO, 2007), p. vii. Available from [www.who.int/whr/2007/whr07\\_en.pdf?ua=1](http://www.who.int/whr/2007/whr07_en.pdf?ua=1).

<sup>8</sup> Human Rights Council resolution 44/2, paras. 1–3. See also African Commission on Human and Peoples' Rights resolution 449 (LXVI) of 7 August 2020, sixteenth and eighteenth preambular paragraphs.

<sup>9</sup> A/HRC/35/35, annex, art. 2 (c); see also, in the context of the pandemic, arts. 2, 43 and 44 of the WHO International Health Regulations. Available from [www.who.int/publications/i/item/9789241580496](http://www.who.int/publications/i/item/9789241580496).

<sup>10</sup> Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990) on the nature of States parties' obligations; See also A/HRC/44/28, sect. II.

<sup>11</sup> Article 2 (1) of the International Covenant on Economic, Social and Cultural Rights.

<sup>12</sup> See Article 2 (1) (maximum available resources), article 8 (1) (b) (national and international trade unions), article 11 (1) (adequate standard of living, food, clothing and housing), article 11 (2) (freedom from hunger, knowledge-sharing on nutrition and agriculture and world food supplies), article 12 (2) (c) (prevention, treatment and control of epidemic, endemic, occupational and other diseases), article 15 (4) (scientific progress) and article 23 (modes of international action) of the International Covenant on Economic, Social and Cultural Rights; and article 26 of the American Convention on Human Rights; see also common article 1 (2) (free disposal of wealth without prejudice to international cooperation in mutual benefit) of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights; article 21 (3) of the African Charter on Human and Peoples' Rights of the Organization of African Unity; articles II (4), VII and VIII of the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa; and articles 2 (12) and 19 (2) of the African Charter on Democracy Elections and Good Governance of the African Union.

<sup>13</sup> Shyami Puvimanasinghe, "International solidarity in an interdependent world" in *Realizing the Right to Development: Essays in Commemoration of 25 Years of the United Nations Declaration on the Right to Development* (Geneva and New York, United Nations, 2013), p. 182; and Volker Türk and Madeline Garlick, "From burdens and responsibilities to opportunities: the comprehensive refugee response framework and a global compact on refugees", *International Journal of Refugee Law*, vol. 28, No. 4, p. 658.

<sup>14</sup> A/HRC/35/35, annex.

<sup>15</sup> *Ibid.*, article 1. See also Puvimanasinghe, "International solidarity in an interdependent world", p. 180; and Obiora Chinedu Okafor, "The future of international solidarity in global refugee protection", *Human Rights Review*, vol. 22, No. 1, p. 6.

international community to respond to situations of crisis; and international cooperation.<sup>16</sup> The Independent Expert recognizes that international solidarity is not a State-centric phenomenon and can be expressed, withheld or violated by State and non-State actors alike.<sup>17</sup> It is also not limited to international assistance and cooperation, aid, charity or humanitarian assistance; it is a broader concept and principle.<sup>18</sup>

7. In the context of the COVID-19 pandemic, the existing obligations to express international solidarity in the human rights field, including through international cooperation, have taken on a particular and renewed importance and urgency. It is therefore crucial that the ways in which international solidarity has, or has not, been expressed by States and other actors in the context of the COVID-19 pandemic, towards the fuller realization of all categories of human rights, be more systematically studied and understood, including by the Human Rights Council. The present report is a contribution to that goal.

8. Accordingly, in section II, the Independent Expert examines the threats to the enjoyment of all categories of human rights that the pandemic and measures to control its spread have produced or exacerbated, using international human rights law, supplemented by the WHO International Health Regulations, as a normative framework. The threats are discussed in three subsections: economic and social rights; civil and political rights; and the right to development. In section III, he analyses the imperative of international solidarity for the realization of human rights in the context of the pandemic, outlining the ethical and legal rationales for this imperative, arguing in favour of the legally binding nature of the obligations highlighted. In section IV, the obligations are then set out as the normative framework for identifying the gaps in international solidarity in the context of the pandemic. In section V, he identifies and highlights some positive efforts and best practices, which is followed by conclusion and recommendations for States and non-State actors.

## II. The pandemic, and measures taken to contain it, as a threat to the enjoyment of all categories of human rights

9. Public health measures “implemented in response to outbreaks, such as government-imposed quarantines, *cordons sanitaires*, trade restrictions and travel bans ... have significant deleterious effects on other countries and on those other countries’ inhabitants”.<sup>19</sup> The International Health Regulations aim to “prevent, protect against, control and provide a public health response to the international spread of disease” while avoiding “unnecessary interference with international traffic and trade”.<sup>20</sup> Their near universal acceptance (196 States) underscores the prior recognition, both legal and political, of the need to cooperate across borders in preventing the spread of infectious diseases in a globalized world.<sup>21</sup> The Regulations preserve that balance of disease control, while aiming to ensure the continuity of regular international life, by prescribing certain lawful measures in infectious disease control. The Regulations also allow for national actions beyond those prescribed in the Regulations or recommended by WHO, provided that they achieve similar or greater health protections than the international prescriptions (article 43 (1) (a)) and are not specifically prohibited by the Regulations, in particular relating to international traffic and trade. In conditions similar to limitations and derogations in international human rights law, such measures must be proportional and not more restrictive or invasive to persons than is needed for health protection and be scientifically validated, including using data from WHO and other international institutions. Significantly, States must report the application of such

<sup>16</sup> A/HRC/35/35, annex, art. 2.

<sup>17</sup> *Ibid.*, arts. 6 (2), 7 and 8 (1); and Okafor, “International solidarity, human rights and life on the African continent ‘after’ the pandemic”.

<sup>18</sup> Human Rights Council resolution 44/11, para. 2.

<sup>19</sup> Roojin Habibi and others, “The Stellenbosch consensus on legal national responses to public health risks: clarifying article 43 of the International Health Regulations”, *International Community Law Review*, 2020, p. 4.

<sup>20</sup> Article 2 of the International Health Regulations; and Habibi and others, “The Stellenbosch consensus”, p. 5.

<sup>21</sup> Steven J. Hoffman, “How many people must die from pandemics before the world learns?” *Global Challenges* vol. 30, cited in Habibi and others, “The Stellenbosch consensus”, p. 4.

measures, and their scientific basis and public health rationale, to WHO.<sup>22</sup> Consistent with the hortatory approach of systemic integration in the interpretation of international obligations,<sup>23</sup> the Independent Expert notes that any lawful restrictions to public liberties for reasons of the COVID-19 pandemic should be correspondingly reported to both WHO, under the Regulations, and the Human Rights Committee, under the International Covenant on Civil and Political Rights.

## A. Economic and social rights

10. The measures taken to combat the pandemic “have had deleterious consequences for the poor, the low-income earners and the millions who rely on informal activities to eke [out] a living for themselves”, increasing hunger and exacerbating already high unemployment and underemployment rates,<sup>24</sup> and for the millions of workers who have little or no access to collective bargaining.<sup>25</sup> Prior to the pandemic, only 31 per cent of the global population was fully covered by social security; only about 33 per cent of children enjoyed social protection; only 22 per cent of the employed enjoyed unemployment cash benefits; and just 28 per cent of persons with severe disabilities received disability cash benefits.<sup>26</sup> When the pandemic struck, so did the widespread use of force majeure exceptions to contractual obligations related to employment, small- and medium-sized business guarantees, orders and shipment contracts, insurance and other legal regimes that sustain livelihoods.<sup>27</sup> That resulted in loss of employment, the indefinite reduction of salaries or other employment benefits, the revocation of guarantees for small- and medium-sized businesses and the loss of public and private insurance covers for health and unemployment. The International Labour Organization estimates a global loss of between 5 million and 25 million jobs and losses in labour income of between \$860 billion to \$3.4 trillion, as a result pandemic control measures.

11. Regarding women’s rights, the goal of increasing work opportunities for women has been severely reversed, with women accounting for up to 80 per cent of the newly unemployed in one State, in August and September 2020.<sup>28</sup> The goals of equal pay for work of equal value, better work-life balance and the equal burden-sharing of child care in the household have also been negatively impacted.<sup>29</sup> School closures have added negative pressure on the work-life balance for women, as family care duties have increased, forcing women to choose between home care and work in many countries across the globe.<sup>30</sup> Women make up 70 per cent of the global health-care workforce, also putting them at greater risk of infection.<sup>31</sup>

12. More generally, the massive income and livelihood losses for hundreds of millions of low-income households worldwide has also meant an attendant increase in risk of household loan default. While a number of high-income countries implemented taxpayer funded stimulus packages that included support to individuals and small- and medium-sized

<sup>22</sup> Article 43 (2)–(8) of the International Health Regulations; see also Habibi and others, “The Stellenbosch consensus”, p. 6.

<sup>23</sup> A/61/10, chap. XII.D.II.4; see also Habibi and others, “The Stellenbosch consensus”, para. 2.2.3.

<sup>24</sup> Charles Manga Fombad, “Editorial introduction to special focus: assessing the implications of COVID-19 pandemic regulations for human rights and the rule of law in Eastern and Southern Africa”, *African Human Rights Law Journal*, vol. 20, No. 2, p. 369; and United Nations, “Shared responsibility”, p. 8.

<sup>25</sup> International Labour Organization (ILO) “The supply chain ripple effect: How COVID-19 is affecting garment workers and factories in Asia and the Pacific”, research brief, October 2020, p. 13.

<sup>26</sup> ILO and Office of the United Nations High Commissioner for Human Rights (OHCHR), “Universal social protection floors are a joint responsibility”, joint op-ed, 26 October 2020 Available from [www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_759106/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_759106/lang--en/index.htm).

<sup>27</sup> SURGE Econ BLOG, “Economic Shifts and Human Rights Implications”, 5 November 2020, p. 3.

<sup>28</sup> Sarah Green Carmichael, “COVID-19 explodes the myth that women ‘opt’ out”, Bloomberg Opinion, 20 October 2020. Available from [www.bloomberg.com/opinion/articles/2020-10-20/covid-19-explodes-the-myth-that-women-opt-out-of-the-workforce](http://www.bloomberg.com/opinion/articles/2020-10-20/covid-19-explodes-the-myth-that-women-opt-out-of-the-workforce); and United Nations, “Shared responsibility”, p. 8.

<sup>29</sup> United Nations, “Shared responsibility”, p. 10.

<sup>30</sup> *Ibid.*, p. 9.

<sup>31</sup> *Ibid.*

businesses,<sup>32</sup> many low-income countries rather urged financial institutions to consider extending loan restructuring to their debtors.<sup>33</sup> However, banking regulators worldwide must ensure that consumers, and hundreds of millions of individuals and small- and medium-sized enterprises, are protected from predatory lending and hidden onerous conditions, as economies open up in 2021.<sup>34</sup>

13. Migrants have also been heavily affected by the pandemic. The documented migrant workforce makes up “almost 30 per cent of workers in some of the most affected sectors in [Organisation for Economic Co-operation and Development] countries”.<sup>35</sup> Yet, given their migrant status, even when legally resident, migrant workers nevertheless tend to face unspeakable hardships, are among the first to lose their jobs and lack the social capital that helps to sustain households in times of crisis.<sup>36</sup> Across the Middle East, for example, many migrant workers were abandoned by their employers and left homeless and stranded, which tended to have an even more severe impact on women migrants.<sup>37</sup>

14. One of the greatest effects of the pandemic has been the near collapse of schooling across the globe. At the height of quarantine measures in early 2020, up to 1.52 billion children and young people, representing 87 per cent of the population attending school and college, were out of class.<sup>38</sup> Not only do schools constitute places for academic learning and professional preparation, they also play central socialization roles.<sup>39</sup> They are also important safe zones and feeding centres for deprived children in high- and low-income countries, and the “sustained disruption of education ... could lead to a rise in child labour and child marriage”.<sup>40</sup> While digital technologies have offered important opportunities for continuity in learning, reliable online learning infrastructure and equipment is not accessible to a significant proportion of families across the globe. “According to [the International Telecommunication Union], an estimated 3.6 billion people remain offline, with the majority of the unconnected living in the least developed countries.”<sup>41</sup> Moreover, parents in lower income families tend to lack the work-life balance needed to accompany children in online learning. That has created unacceptable inequalities to the effect that, across the globe, from high- to low-income countries, children from high-income backgrounds have been able to continue with their learning in some form, while their less privileged counterparts, even in the very same countries, lost much of their 2020 academic year.<sup>42</sup>

15. International human rights instruments are clear on the right of workers to healthy working conditions.<sup>43</sup> Nearly 60.2 million teachers, and the unseen millions of their support

<sup>32</sup> IMF, *World Economic Outlook*, p. xiii.

<sup>33</sup> James Anyanzwa, “Kenya: how lenders laced COVID-19 loans relief with hidden pain”, Daily Nation, 19 October 2020. Available from <https://allafrica.com/stories/202010190948.html>.

<sup>34</sup> Patricia Andago, “COVID-19: regulatory measures could widen Kenya’s financial access gap”, The Elephant, 18 September 2020. Available from [www.theelephant.info/data-stories/2020/09/18/covid-19-regulatory-measures-could-widen-kenyas-financial-access-gap/](http://www.theelephant.info/data-stories/2020/09/18/covid-19-regulatory-measures-could-widen-kenyas-financial-access-gap/).

<sup>35</sup> United Nations, “Shared responsibility”, p. 8.

<sup>36</sup> See [https://gaatw.org/publications/Kenya\\_Country\\_Report.pdf](https://gaatw.org/publications/Kenya_Country_Report.pdf).

<sup>37</sup> Zecharias Zelalem, “Abandoned in Lebanon, African domestic workers just want to go home”, Mail and Guardian, 14 September 2020. Available from <https://mg.co.za/africa/2020-09-14-abandoned-in-lebanon-african-domestic-workers-just-want-to-go-home/>; and “Report: 29 million girls, women victims of modern slavery”, Daily Star, 10 October 2020. Available from [www.dailystar.com.lb/News/World/2020/Oct-10/512914-report-29-million-girls-women-victims-of-modern-slavery.ashx](http://www.dailystar.com.lb/News/World/2020/Oct-10/512914-report-29-million-girls-women-victims-of-modern-slavery.ashx).

<sup>38</sup> United Nations, “Shared responsibility”, p. 9; and IMF, *World Economic Outlook*, p. xiv.

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*,

<sup>42</sup> A/HRC/44/39, paras. 24–25; and Winnie Kishara and Njoki Ngunyi, “Covid-19 and Inequalities in Primary and Secondary Education in Africa: The Case Of Kenya”, African Leadership Centre, op-ed series, vol. 2, No. 5. Available from [www.africanleadershipcentre.org/index.php/covid-19-research/634-covid-19-and-inequalities-in-primary-and-secondary-education-in-africa-the-case-of-kenya](http://www.africanleadershipcentre.org/index.php/covid-19-research/634-covid-19-and-inequalities-in-primary-and-secondary-education-in-africa-the-case-of-kenya).

<sup>43</sup> Article 7 (b) of the International Covenant on Economic, Social and Cultural Rights; article 15 of the African Charter on Human and Peoples’ Rights; and article 7 (e)–(d) of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights.

staff, are threatened by the potential occurrence of COVID-19 infections.<sup>44</sup> Thus, school reopening, while a critical element of the national interest of States and important for the mental health of whole generations, must be accompanied by critical investment in health and safety and the facilities necessary to implement COVID-19 safety protocols, as exemplified by the school reopening strategy of Rwanda.<sup>45</sup> In countries where schools were already overcrowded before the pandemic, this risk is even greater and cannot reasonably be borne without significant public investment in expanding school infrastructure.

16. International law affirms the obligation of international cooperation to ensure freedom from hunger, in scientific knowledge-sharing and, “taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies”.<sup>46</sup> As measures to combat the pandemic struck down global supply chains, access to food was suddenly cut off for many, threatening the right to food of millions, in particular the urban poor. Impacts were more acutely felt in advanced economies with highly centralized and integrated food distribution systems.<sup>47</sup> School closures also affected children’s access to nutritious food in rich and poor economies.<sup>48</sup> The World Food Programme (WFP) has affirmed fundamental principles of international solidarity as ways of mitigating the harm to access to food which is expected to result from measures taken to combat the pandemic, including monitoring prices and supporting social safety nets, principles which were largely supported by multilateral agencies soon after they were recommended in April 2020.<sup>49</sup>

## B. Civil and political rights

17. The fundamental challenge in all the instances of violations of civil and political rights in COVID-19 control measures relates to securitization in the context of a public health emergency.<sup>50</sup> In many countries, the suspension of laws and the myriad “lockdown” measures “necessarily concentrate[d] power in the hands of politicians and other officials”, while at the same time shutting down traditional checks on the exercise of emergency powers, such as through the courts and parliamentary oversight.<sup>51</sup> Such concentrated power has not always been fairly or appropriately used.<sup>52</sup> As such, COVID-19 has exposed the weaknesses of constitutional and rule of law safeguards in many countries.<sup>53</sup> States are obliged however, in responding to emergencies, to ensure that law enforcement actions are, inter alia, consistent

<sup>44</sup> United Nations, “Shared responsibility”, p. 9.

<sup>45</sup> Bertrand Byishimo and Lavie Mutanganshuro, “Over 22,500 classrooms to be completed by September, says Mineduc”, *The New Times*, 9 June 2020. Available from [www.newtimes.co.rw/news/over-22500-classrooms-be-completed-september-says-mineduc](http://www.newtimes.co.rw/news/over-22500-classrooms-be-completed-september-says-mineduc).

<sup>46</sup> Article 11 (2) of the International Covenant on Economic, Social and Cultural Rights.

<sup>47</sup> Ignacio Felix and others, “US food supply chain: disruptions and implications from COVID-19”, McKinsey and Company, 2 July 2020. Available from [www.mckinsey.com/industries/consumer-packaged-goods/our-insights/us-food-supply-chain-disruptions-and-implications-from-covid-19](http://www.mckinsey.com/industries/consumer-packaged-goods/our-insights/us-food-supply-chain-disruptions-and-implications-from-covid-19).

<sup>48</sup> United States of America, Centres for Disease Control, “Considerations for food pantries and food distribution sites”, 8 December 2020. Available from [www.cdc.gov/coronavirus/2019-ncov/community/organizations/food-pantries.html](http://www.cdc.gov/coronavirus/2019-ncov/community/organizations/food-pantries.html)

<sup>49</sup> Simona Beltrami, “How to minimize the impact of coronavirus on food security”, *World Food Programme Insight*, 16 March 2020. Available from <https://insight.wfp.org/how-to-minimize-the-impact-of-coronavirus-on-food-security-be2fa7885d7e>. See also [www.worldbank.org/en/news/statement/2020/04/21/joint-statement-on-covid-19-impacts-on-food-security-and-nutrition](http://www.worldbank.org/en/news/statement/2020/04/21/joint-statement-on-covid-19-impacts-on-food-security-and-nutrition).

<sup>50</sup> Fombad, “Editorial introduction to special focus”.

<sup>51</sup> *Ibid.*, p. 368

<sup>52</sup> Anne Applebaum, “The people in charge see an opportunity”, *The Atlantic*, 23 March 2020. Available from [www.theatlantic.com/ideas/archive/2020/03/when-disease-comes-leaders-grab-more-power/608560/](http://www.theatlantic.com/ideas/archive/2020/03/when-disease-comes-leaders-grab-more-power/608560/); and Justus B. Aungo, “Exposed: limits of State and public trust during the COVID-19 pandemic in Kenya”, *African Arguments*, 11 November 2020. Available from <https://africanarguments.org/2020/11/11/exposed-limits-of-state-and-public-trust-during-the-covid-19-pandemic-in-kenya/>.

<sup>53</sup> Charles Manga Fombad and Lukman Adebisi Abdulrauf, “Comparative overview of the constitutional framework for controlling the exercise of emergency powers in Africa”, *African Human Rights Law Journal*, vol. 20, No. 2.



with the principles of legality, necessity, proportionality, accountability and non-endangerment of life.<sup>54</sup>

18. Physical distancing has been unassailably established as a necessary measure to contain the pandemic.<sup>55</sup> While that necessity has invariably required certain justifiable restrictions on the freedoms of movement, association and assembly, many of those measures have been abused.<sup>56</sup> Reports abound of State agencies' misuse of emergency powers and skewed enforcement of COVID-19 restrictions to circumvent checks against State overreach,<sup>57</sup> including arbitrary and mass arrests, excessive use of force by police to enforce curfews, extortion and blackmail, evictions, unjust use of criminal procedures and court processes and the use of custodial sentencing to combat quarantine rule breakers, leading to overcrowding in legal detention centres and further increasing viral spread.<sup>58</sup> In a number of States, it was reported that citizens were more likely to die from the enforcement of "lockdown" measures than from COVID-19 itself.<sup>59</sup>

19. Strong arm securitization is always accompanied by severe and unlawful restrictions to free speech and media freedoms and too often puts journalists in danger.<sup>60</sup> In addition, COVID-19 control measures have been abused to facilitate more systematic political repression in some of the States that conducted electoral processes during 2020.<sup>61</sup> Of the rights related to any electoral process, free speech, assembly, association and movement are critical. In one East African State, opposition politicians were systematically intimidated and harassed on the campaign trail.<sup>62</sup> In another State in that region, an opposition presidential candidate was arrested while campaigning for the 2021 presidential elections and charged in court for violating COVID-19 protocols, sparking off deadly protests.<sup>63</sup> Of the 18 electoral processes that were scheduled for 2020 on one continent alone, at least 9 had been postponed by the end of 2020.<sup>64</sup> Some of the elections have proceeded under conditions reportedly characterized by severe securitized constraints that ensured the contested victories of the

<sup>54</sup> Human Rights Committee, general comment No. 37 (2020) on the right of peaceful assembly (article 21); African Commission on Human and Peoples' Rights resolution 449 (LXVI), para. 2; and Inter-American Commission on Human Rights resolution 1/2020.

<sup>55</sup> See <https://africacdc.org/download/guidance-on-community-social-distancing-during-covid-19-outbreak/>.

<sup>56</sup> See [www.achpr.org/pressrelease/detail?id=553](http://www.achpr.org/pressrelease/detail?id=553).

<sup>57</sup> Applebaum, "The people in charge"; and Aungo, "Exposed: limits of State and public trust".

<sup>58</sup> See [www.achpr.org/pressrelease/detail?id=553](http://www.achpr.org/pressrelease/detail?id=553).

<sup>59</sup> Simbarashe Gukurume, "Zimbabwe: abductions, brutality, demolitions: when the State becomes more harmful than COVID-19", New Zimbabwe, 24 May 2020. Available from <https://allafrica.com/stories/202005240128.html>; and [www.hrw.org/news/2020/11/20/uganda-authorities-weaponize-covid-19-repression](http://www.hrw.org/news/2020/11/20/uganda-authorities-weaponize-covid-19-repression).

<sup>60</sup> University of Pretoria. Centre for Human Rights, *The Erosion of the Rule of Law in Eritrea: Silencing Freedom of Expression* (Pretoria, Pretoria University Law Press, 2015); and James Nkuubi "When guns govern public health: examining the implications of the militarised COVID-19 pandemic response for democratisation and human rights in Uganda", *African Human Rights Law Journal*, vol. 20, No. 2.

<sup>61</sup> See [www.hrw.org/news/2020/11/20/uganda-authorities-weaponize-covid-19-repression](http://www.hrw.org/news/2020/11/20/uganda-authorities-weaponize-covid-19-repression).

<sup>62</sup> See [www.achpr.org/pressrelease/detail?id=539](http://www.achpr.org/pressrelease/detail?id=539).

<sup>63</sup> Derrick Wandera, "Bobi Wine granted bail, directed to comply with COVID-19 SOPs", Daily Monitor, 20 November 2020. Available from [www.monitor.co.ug/uganda/news/national/bobi-wine-granted-bail-directed-to-comply-with-covid-19-sops-3205022](http://www.monitor.co.ug/uganda/news/national/bobi-wine-granted-bail-directed-to-comply-with-covid-19-sops-3205022).

<sup>64</sup> Comoros – Union Assembly (January 2020); Cameroon – National Assembly, Senate and local (February 2020); Togo – President (February 2020); Egypt – House of Representatives (April–May 2020); Mali – National Assembly (May 2020); Ethiopia – House of People's Representatives and regional state councils (May 2020); Burundi – President (20 May 2020), National Assembly and local (June 2020); Côte d'Ivoire – President (October 2020); Guinea – National Assembly and President, (October 2020); Tanzania – President and National Assembly (October 2020); Somalia – House of the People (October 2020); Seychelles – President (October–December 2020); Burkina Faso – President and National Assembly (November 2020); Namibia – national, regional and local (November 2020); Ghana – President and National Assembly (December 2020); Chad – legislative and local (August 2020); and Gabon – Senate (late 2020 or early 2021). ([www.un.org/africarenewal/magazine/december-2019-march-2020/africa-watch-2020-election-season-across-africa](http://www.un.org/africarenewal/magazine/december-2019-march-2020/africa-watch-2020-election-season-across-africa); [www.idea.int/news-media/multimedia-reports/global-overview-covid-19-impact-elections](http://www.idea.int/news-media/multimedia-reports/global-overview-covid-19-impact-elections); and [www.idea.int/news-media/news/covid-19-electoral-landscape-africa](http://www.idea.int/news-media/news/covid-19-electoral-landscape-africa)).

incumbents.<sup>65</sup> Those elections involved reports of arbitrary arrests of critical figures, such as journalists and opposition politicians, electoral violence and forced displacement.<sup>66</sup>

20. On a related note, although contact tracing during health emergencies is an important aspect of combating its spread, and the use of digital solutions greatly facilitates such a task, especially in a truly global pandemic, it has also been abused. Some surveillance methods adopted by States to facilitate “contact-tracing” and ensure adherence to quarantine rules have raised concerns over the right to privacy and data protection, especially in the light of their mandatory use.<sup>67</sup> The creation of centralized and opaque databases, powered by mass surveillance applications, erected without safeguards because of the alleged want of time, are a long-term threat to human rights, even in so-called “advanced democracies”.<sup>68</sup> There exists the unsettling precedent of measures taken during health emergencies becoming permanent features of injustice, systemic inequality and segregation, especially for historically marginalized groups, in particular along gender, age, sexual orientation, socioeconomic, cultural and racial lines.<sup>69</sup> That concern applies not only to States, democratic or illiberal, but also to publicly mandated, private, commercially provided applications or joint endeavours of States and private sector enterprises,<sup>70</sup> across the globe, with examples in Europe,<sup>71</sup> North America,<sup>72</sup> the Middle East and North Africa,<sup>73</sup> Central and South America,<sup>74</sup> Africa<sup>75</sup> and in the Asia-Pacific region.<sup>76</sup>

21. The necessary but difficult stay-at-home restrictions imposed in many States have also increased household stress levels during the pandemic, stemming from lack of movement,

<sup>65</sup> See [www.un.org/press/en/2020/sgsm20395.doc.htm](http://www.un.org/press/en/2020/sgsm20395.doc.htm).

<sup>66</sup> AL TZA 3/2020. Available from <https://spcommreports.ohchr.org/Tmsearch/TMDocuments;www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26117&LangID=E>; and [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26632&LangID=E](https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26632&LangID=E).

<sup>67</sup> Astrid Prange, “Will Germans trade privacy for coronavirus protection?” *Deutsche Welle*, 29 March 2020. Available from [www.dw.com/en/will-germans-trade-privacy-for-coronavirus-protection/a-52943225](http://www.dw.com/en/will-germans-trade-privacy-for-coronavirus-protection/a-52943225).

<sup>68</sup> Woojin Lim “Assessing the implications of digital contact tracing for COVID-19 for human rights and the rule of law in South Africa”, *African Human Rights Law Journal*, vol. 20, No. 2.

<sup>69</sup> Sara L.M. Davis, “Contact tracing apps: extra risks for women and marginalized groups”, *Health and Human Rights Journal*, viewpoints, 29 April 2020. Available from [www.hhrjournal.org/2020/04/contact-tracing-apps-extra-risks-for-women-and-marginalized-groups/](http://www.hhrjournal.org/2020/04/contact-tracing-apps-extra-risks-for-women-and-marginalized-groups/); Karen Carter and others, “Digital contact tracing and surveillance during COVID-19: general and child-specific ethical issues”, Innocenti Research Brief, November 2020; and Fombad, “Editorial introduction to special focus”.

<sup>70</sup> Bobbie Johnson, “The US’s draft law on contact tracing apps is a step behind Apple and Google”, *MIT Technology Review*, 2 June 2020. Available from [www.technologyreview.com/2020/06/02/1002491/us-covid-19-contact-tracing-privacy-law-apple-google/](http://www.technologyreview.com/2020/06/02/1002491/us-covid-19-contact-tracing-privacy-law-apple-google/); and Dima Samaro and Marwa Fatafta, “COVID-19 contact-tracing apps in MENA: a privacy nightmare”, *Access Now*, 18 June 2020. Available from [www.accessnow.org/covid-19-contact-tracing-apps-in-mena-a-privacy-nightmare/](http://www.accessnow.org/covid-19-contact-tracing-apps-in-mena-a-privacy-nightmare/)

<sup>71</sup> See [www.amnesty.org/en/latest/news/2020/06/bahrain-kuwait-norway-contact-tracing-apps-danger-for-privacy/](http://www.amnesty.org/en/latest/news/2020/06/bahrain-kuwait-norway-contact-tracing-apps-danger-for-privacy/).

<sup>72</sup> Amos Toh and Deborah Brown, “How digital contact tracing for COVID-19 could worsen inequality”, *Just Security*, 4 June 2020. Available from [www.justsecurity.org/70451/how-digital-contact-tracing-for-covid-19-could-worsen-inequality/](http://www.justsecurity.org/70451/how-digital-contact-tracing-for-covid-19-could-worsen-inequality/).

<sup>73</sup> Samaro and Fatafta, “COVID-19 contact-tracing”.

<sup>74</sup> See [www.globalwitness.org/en/press-releases/investigation-reveals-serious-concerns-over-guatemala-covid-19-app/](http://www.globalwitness.org/en/press-releases/investigation-reveals-serious-concerns-over-guatemala-covid-19-app/); and [www.hrw.org/news/2020/05/13/mobile-location-data-and-covid-19-qa](http://www.hrw.org/news/2020/05/13/mobile-location-data-and-covid-19-qa).

<sup>75</sup> Lim, “Assessing the implications”; Nkatha Kabira and Robert Kibugi, “Saving the soul of an African constitution: learning from Kenya’s experience with constitutionalism during COVID-19”, *African Human Rights Law Journal*, vol. 20, No. 2; and Victor Kapiyo, “The erosion of digital rights in the fight against COVID-19 in Kenya”, *Collaboration on International ICT Policy in East and Southern Africa*, 22 September 2020. Available from <https://cipesa.org/2020/09/the-erosion-of-digital-rights-in-the-fight-against-covid-19-in-kenya/>.

<sup>76</sup> Josh Taylor, “Privacy concerns over Australian businesses collecting data for COVID contact tracing”, *The Guardian*, 10 August 2020. Available from [www.theguardian.com/australia-news/2020/aug/11/privacy-concerns-over-australian-businesses-collecting-data-for-covid-contact-tracing](http://www.theguardian.com/australia-news/2020/aug/11/privacy-concerns-over-australian-businesses-collecting-data-for-covid-contact-tracing); and [www.amnesty.org/en/latest/news/2020/04/how-china-used-technology-to-combat-covid-19-and-tighten-its-grip-on-citizens/](http://www.amnesty.org/en/latest/news/2020/04/how-china-used-technology-to-combat-covid-19-and-tighten-its-grip-on-citizens/).

being cut off from social interaction and suffering loss of income and livelihoods in many cases. The concerns over the mental health rights of populations under lockdown measures, especially members of low-income households that are likely to live in small spaces, have been highlighted from the onset of the pandemic.<sup>77</sup> Furthermore, the incidence of domestic violence and gender-based violence has also increased in the periods when populations have been confined to their homes.<sup>78</sup> A rise in harmful practices, including forced child marriage, itself related to mass school closures, female genital mutilation and early pregnancy, has also been reported.<sup>79</sup>

22. Against that sombre background, the Independent Expert respectfully reminds States of the requirements imposed by the binding international legal framework for derogations from civil and political rights in times of a public health emergency, as provided principally under the International Covenant on Civil and Political Rights.<sup>80</sup> Article 4 of the Covenant does allow a degree of room for States to derogate from its provisions in a time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, but only to the extent strictly required by the exigencies of the situation, provided that the derogative measures are not inconsistent with States' other obligations under international law and do not involve any of the stated forms of discrimination. What is more, under that provision, States are not permitted to derogate at all from certain human rights, such as the rights to life and freedom from torture or cruel, inhuman and degrading treatment or punishment, the prohibition against slavery and the rights to freedom of thought, conscience and religion.

### III. The international solidarity imperative for the realization of human rights during and after the pandemic

#### A. The ethical rationale

23. The COVID-19 pandemic has highlighted the intensity of our interconnectedness as human beings and societies, especially our mutual vulnerability.<sup>81</sup> That point was aptly and memorably articulated by Reverend Martin Luther King, Jr., in his famous *Letter from the Birmingham Jail* of 1963, in which he noted that: "We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one, directly affects all indirectly." Along the same lines, it should be clear that a COVID-19 outbreak "over there" is also a COVID-19 problem "right here".<sup>82</sup> There is simply no way of enjoying "our" human rights more fully "over here" while the human rights of the vast majority of the world's peoples who live "over there" hangs in the balance.<sup>83</sup> That includes the rights of those "others" to development, health, education, food, shelter and work.<sup>84</sup>

24. In considering the ethical rationale for the international solidarity imperative for the realization of human rights during and after the pandemic, however, it is important to confront the underdiscussed conceptual clash between the realpolitik view of international relations and the calls for ethical public policymaking. There is little disagreement that we

<sup>77</sup> Inter-American Commission on Human Rights resolution 1/2020, sect. B.I and paras. 11 and 52; Mustapha Dumbuya and others, "The impact of technology on mental health during COVID-19" *AfricLaw*, 22 May 2020. Available from <https://africlaw.com/2020/05/22/the-impact-of-technology-on-mental-health-during-covid-19/>.

<sup>78</sup> See [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26533&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26533&LangID=E); [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25808&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25808&LangID=E); and [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26369&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26369&LangID=E).

<sup>79</sup> African Commission on Human and Peoples' Rights resolution 449 (LXVI).

<sup>80</sup> Article 4 of the International Covenant on Civil and Political Rights; see also, in the context of the pandemic, articles 3, 43 and 44 of the International Health Regulations.

<sup>81</sup> United Nations, "Shared responsibility", p. 1.

<sup>82</sup> Okafor, "International solidarity, human rights and life on the African continent 'after' the pandemic".

<sup>83</sup> *Ibid.*

<sup>84</sup> *Ibid.*

live in a highly interconnected and mutually vulnerable world, with massive cross-border trade in goods and services and movement of persons; it should therefore also be clear that the COVID-19 pandemic gives us little meaningful room to be blinded by mere national or local self-interest. In fact, in the context of the pandemic, the ethical imperative is – or at least it should be – inextricably connected to the *realpolitik*.

25. Solidarity constitutes a bulwark against injustice, oppression and control. Injustice thrives when the oppressed are isolated from each other and feel vulnerable or incapable of social action.<sup>85</sup> The same is true of international solidarity among States and other international actors. Solidarity is a recognition of the humanity of the “other” and therefore a critical component of harmonious social life at the local, national and international levels.

## B. The legal rationale

26. International solidarity is also legally rooted in the universal conviction that harmonious international life is based not only in the negative obligations to cease or desist from malign actions against other States but also in positive obligations to cooperate.<sup>86</sup> International law establishes the obligation to cooperate to advance human rights, an aspect of international solidarity.<sup>87</sup> In the Charter of the United Nations, the constitution that ultimately frames and governs global relations in our time, one of its fundamental purposes is asserted as the achievement of international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion (Art. 1 (3)). In Articles 55 and 56 of the Charter, all Members pledge themselves to take joint and separate action in cooperation with the Organization to achieve the purposes set forth therein, which include universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion. In the context of the pandemic, the reference in article 3 of the International Health Regulations, in mandatory language, not only to dignity, human rights and fundamental freedoms of persons, but also to the Charter of the United Nations and the Constitution of WHO, clarifies that international solidarity and human rights must be applied in the context of infectious disease control<sup>88</sup> and that the obligation of international cooperation in public health emergencies is imperative and legally binding.<sup>89</sup>

27. In article 22 of the Universal Declaration of Human Rights, the role of international cooperation is recognized in everyone’s entitlement to the realization of economic, social and cultural rights. Similarly, in the International Covenant on Economic, Social and Cultural Rights, international assistance and cooperation, especially economic and technical, is mandated as a means of achieving economic, social and cultural rights (art. 2 (1)). International cooperation based on free consent in the context of realizing the right to an adequate standard of living and freedom from hunger (art. 11), and in the scientific and cultural fields (art. 15 (4)), are relevant obligations of States parties to the Covenant. In the Declaration on the Right to Development, the promotion of a new international economic order based on sovereign equality, interdependence, mutual interest and cooperation among all States is mandated, and the observance and realization of human rights is encouraged (art. 3 (3)), with States bearing the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development (art. 3 (1)) in full respect for the principles of international law concerning friendly relations and cooperation among States (art. 3 (2)).<sup>90</sup> In the Vienna Declaration and Programme of Action, the World Conference on Human Rights reaffirmed that the enhancement of international

<sup>85</sup> Interview with Hibaaq Osman, Council of Europe North-South Centre. Available from [www.coe.int/en/web/north-south-centre/interviews](http://www.coe.int/en/web/north-south-centre/interviews).

<sup>86</sup> General Assembly resolution 2625 (XXV).

<sup>87</sup> Articles 55 and 56 of the Charter of the United Nations; article 2 (1) of the International Covenant on Economic, Social and Cultural Rights; and A/HRC/35/35, annex, art. 2 (c); see also, in the context of the pandemic, articles 3, 43 and 44 of the International Health Regulations.

<sup>88</sup> International Health Regulations, p. 6.

<sup>89</sup> Article 44 of the International Health Regulations.

<sup>90</sup> See also Human Rights Council resolution 44/2.

cooperation in the field of human rights was essential for the full achievement of the purposes of the United Nations (part I, para. 1), while urging States to cooperate with each other in ensuring development and eliminating obstacles to development (*ibid.*, para. 10).

#### IV. Gaps in international solidarity in the context of the pandemic

28. The revision of the International Health Regulations in 2005, after the severe acute respiratory syndrome (SARS) epidemic in 2003, was opportune and prescient. Unlike its earlier more restrictive versions, the current Regulations better empower WHO to act to coordinate global responses to infectious disease outbreaks, while fully respecting human rights, and to do so as a function of international solidarity.<sup>91</sup> To maximize the flow of information necessary to combat infectious diseases, the Regulations mandate WHO to receive information from State and non-State actors and to seek further information from States and, as a law of maximums, delineate the most severe restrictions to rights and international trade and traffic allowable. Article 3 of the Regulations affirms that their implementation should be with the full respect for the dignity, human rights and fundamental freedoms of persons, requiring the least intrusive means for limiting human rights (arts. 31 and 43).<sup>92</sup>

29. Infectious disease outbreaks are public events that, more than any others, accentuate the place of the human person, the need for harmonious relations in international life “and the capacity of human rights law to balance competing yet equally compelling issues”.<sup>93</sup> Under article 43 of the Regulations, while States can implement sovereign additional health measures to respond to public health emergencies, those measures must be proportional to the risk, aligned with human rights imperatives and backed by scientific evidence. Under article 44, on the other hand, the legal duty of States to collaborate and assist one another in building national public health systems is outlined. That constitutes a common and shared international responsibility to facilitate the core public health capacities identified in the Regulations.<sup>94</sup> As such, the Regulations form a valid basis in international law for assessing the extent to which States have, or have not, expressed international solidarity in aid of the fuller realization of human rights during the COVID-19 pandemic.<sup>95</sup> The Independent Expert sets out below some examples of the kinds of gaps that are indicative of the extent to which States have not done so.

30. In March 2020, two East Asian States stopped rice exports. Shortly thereafter, two Eastern European States stopped wheat exports. Similarly, “around the world, [at least] two dozen nations took the cue and started hoarding their primary food exports in false anticipation of global shortages amid the unrelenting COVID-19 pandemic. In total, [at least] 17 major food supply nations placed some form of constraint on agricultural exports in the early weeks of the pandemic.”<sup>96</sup> Thankfully, those States quickly rescinded their directives, which helped to ensure that global food prices did not spike, as happened in 2007 and 2008

<sup>91</sup> Humphrey Sipalla, “Love in a time of Ebola: Africa deserves a human rights determination”, *AfricLaw*, 6 November 2014. <https://africlaw.com/2014/11/06/love-in-a-time-of-ebola-africa-deserves-a-human-rights-determination>; and Jeremy Youde, “Mediating risk through the International Health Regulations and bio-political surveillance”, *Political Studies*, vol. 59, No. 4.

<sup>92</sup> Sipalla, “Love in a time of Ebola”; and Youde, “Mediating risk”.

<sup>93</sup> Sipalla, “Love in a time of Ebola”.

<sup>94</sup> See <https://yfile.news.yorku.ca/2020/12/06/new-research-shows-most-countries-are-violating-international-law-during-pandemic/>.

<sup>95</sup> See, generally, Habibi and others, “The Stellenbosch consensus”; and the International Health Regulations.

<sup>96</sup> Darius Okolla, “Food protectionism and nationalism in the age of COVID-19”, *The Elephant*, 31 July 2020. Available from [www.theelephant.info/features/2020/07/31/food-protectionism-and-nationalism-in-the-age-of-covid-19/](http://www.theelephant.info/features/2020/07/31/food-protectionism-and-nationalism-in-the-age-of-covid-19/).

during the global financial crisis. Those events remind us of the pitfalls of the excessive commodification of food and the need to rethink economic development paradigms.<sup>97</sup>

31. In April 2020, politicians from two Western European States accused a powerful North American State of confiscating thousands of protective face masks that one of the European States had already paid for, calling it “an act of modern piracy”.<sup>98</sup> Those aggressive acts, early in the pandemic, set the stage for unfortunate acts which were also possibly unlawful under article 44 of the International Health Regulations. The duty to collaborate in building national public health systems imposed by that provision surely prohibits wilful and unlawful interference with national efforts to implement necessary life-saving health protocols, such as the procurement of medical equipment. It can also be said to be an instance of excessive medical nationalism or protectionism, which involves the hoarding of diagnostics, therapeutics and vaccines.

32. From November 2020, various drug companies and public medical institutes in certain parts of the world began announcing the impressive effectiveness and safety levels of their COVID-19 vaccine candidates. Unfortunately, those announcements only accelerated an already inequitable situation and the race for vaccines. Even before the announcements, complaints were made that “wealthy nations representing just 13 per cent of the world’s population have already cornered more than half (51 per cent) of the promised doses of leading COVID-19 vaccine candidates”.<sup>99</sup> In addition, Oxfam has long warned that the major pharmaceutical companies simply do not have the capacity to make enough vaccines for everyone, leaving nearly two thirds (61 per cent) of the world’s population without the prospect of receiving a vaccine until at least 2022.<sup>100</sup> Even at the commencement of the roll out of actual vaccinations, in December 2020, the situation had not improved significantly. That is even more worrisome against the backdrop of reports that some countries may not acquire a significant quantity of vaccines until 2024.<sup>101</sup>

33. Those kinds of responses to the pandemic also recall existing concerns over the role of intellectual property rights in advancing and maintaining inequities in access to essential medicines.<sup>102</sup> An example is the global AIDS epidemic, in relation to which corporations used patents to artificially restrict supplies of life-saving medicines and to inflate their prices. The Joint United Nations Programme on HIV/AIDS (UNAIDS) and other members of the People’s Vaccine Alliance have since called for a new approach that puts public health first by sharing knowledge and maximizing supply, as mandated in article 44 of the International Health Regulations. As will be discussed below, an alternative regime, however limited in scope, was also devised under the auspices of the World Trade Organization (WTO).

34. On 3 March 2020, one of the world’s largest drug producing States restricted the export of 26 pharmaceutical ingredients and drugs, including paracetamol and various antibiotics. The restrictions were in reaction to supply chain disruptions in another State that produces pharmaceutical ingredients.<sup>103</sup> Subsequently, the former State imposed an export ban on hydroxychloroquine, an experimental COVID-19 treatment, although that ban was

<sup>97</sup> Nicholas Wasonga Orago, “Commonification of food as an approach for the achievement of food security and the realisation of the right to food for all”, *Strathmore Law Journal*, vol. 4, No. 1.

<sup>98</sup> See [www.dw.com/en/us-accused-of-seizing-face-mask-shipments-bound-for-europe-canada/a-53010923](http://www.dw.com/en/us-accused-of-seizing-face-mask-shipments-bound-for-europe-canada/a-53010923).

<sup>99</sup> See [www.oxfam.org/en/press-releases/small-group-rich-nations-have-bought-more-half-future-supply-leading-covid-19](http://www.oxfam.org/en/press-releases/small-group-rich-nations-have-bought-more-half-future-supply-leading-covid-19).

<sup>100</sup> *Ibid.* See also United Nations, “Shared responsibility”, p. 1.

<sup>101</sup> Steve Hendrix and Shira Rubin, “Israel is starting to vaccinate, but Palestinians may have to wait months”, *The Washington Post*, 20 December 2020. Available from [www.washingtonpost.com/world/middle\\_east/israel-vaccine-palestinians-coronavirus/2020/12/18/f1d8d572-4083-11eb-b58b-1623f6267960\\_story.html](http://www.washingtonpost.com/world/middle_east/israel-vaccine-palestinians-coronavirus/2020/12/18/f1d8d572-4083-11eb-b58b-1623f6267960_story.html).

<sup>102</sup> See [www.who.int/intellectualproperty/report/en/](http://www.who.int/intellectualproperty/report/en/).

<sup>103</sup> Hannah Ellis-Petersen, “India limits medicine exports after supplies hit by coronavirus”, *The Guardian*, 4 March 2020. Available from [www.theguardian.com/world/2020/mar/04/india-limits-medicine-exports-coronavirus-paracetamol-antibiotics](http://www.theguardian.com/world/2020/mar/04/india-limits-medicine-exports-coronavirus-paracetamol-antibiotics).

lifted on 6 April 2020.<sup>104</sup> On 3 January 2021, the same State temporarily banned, for a three-month period, the export of all the Oxford–AstraZeneca vaccines manufactured in its territory by an organization that had been contracted to make 1 billion doses for developing nations. Within weeks, a regional organization also enacted export controls regarding vaccines manufactured within the territory of its members.<sup>105</sup> Such moves could lead to low-income nations receiving their first doses under the COVID-19 Vaccine Global Access (COVAX) initiative beginning only in March or April 2021 or later.<sup>106</sup>

35. It should also be noted that certain unilateral and non-targeted sanctions can constitute serious and unlawful threats to international solidarity in the context of the pandemic, which render them a serious human rights issue. Blanket unilateral sanctions against certain States have only continued to impede the capacity of those States to readily acquire COVID-19 related diagnostics, therapeutics and vaccines, along with the existing dilapidation of health and social protection systems occasioned, in part, by the long-standing sanctions. In reality, the sanctions hurt the poor and vulnerable in those societies the most, including by decimating small- and medium-sized businesses that provide livelihoods for millions of people.<sup>107</sup> The Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights called for the lifting of unilateral sanctions that prevented countries from combating COVID-19, in April 2020, an appeal which the Independent Expert joined other mandate holders in reiterating on 7 August 2020.<sup>108</sup> In addition, in her address to the Security Council on 25 November 2020, the Special Rapporteur recalled that humanitarian exemptions and humanitarian aid were slow, expensive, non-transparent, insufficient and ineffective.<sup>109</sup> Given the binding obligations to cooperate under the International Health Regulations, and noting that “unilateral measures are only legal if they do not breach any international obligation of States”,<sup>110</sup> in the context the pandemic, unilateral coercive measures may in some cases constitute unlawful action injurious to international solidarity in aid of human rights.

## V. Positive expressions of international solidarity for the realization of human rights during and after the pandemic

36. The Independent Expert has noted many good practices during the COVID-19 pandemic. The Access to COVID-19 Tools (ACT) Accelerator, convened by WHO and its partners, is a global collaboration aimed at accelerating the development and production of, and equitable access to, COVID-19 diagnostics, therapeutics and vaccines. The scheme was launched in April 2020, and \$5.6 billion has been pledged to date, with \$3.7 billion still needed, in addition to a further \$23.9 billion needed in 2021 to achieve its aims. Its membership includes the Coalition for Epidemic Preparedness Innovations, the Gavi Alliance, the Global Fund to Fight AIDS, Tuberculosis and Malaria, Unitaid, the Foundation for Innovative New Diagnostics, the Wellcome Trust, the World Bank Group and the Bill and Melinda Gates Foundation.<sup>111</sup> As at September 2020, 50 diagnostic tests had been assessed, and 120 million affordable quality rapid tests were expected to be made available to low-income States. In the area of therapeutics, ACT-Accelerator partners are evaluating over 1,700 clinical trials and have secured dexamethasone for up to 2.9 million patients in low-income countries and an agreement to help to facilitate future access to monoclonal

<sup>104</sup> Akash Bisht, “India lifts drug export ban after Trump’s ‘retaliation’ threat”, *Al Jazeera*, 7 April 2020. Available from [www.aljazeera.com/news/2020/4/7/india-lifts-drug-export-ban-after-trumps-retaliation-threat](http://www.aljazeera.com/news/2020/4/7/india-lifts-drug-export-ban-after-trumps-retaliation-threat).

<sup>105</sup> See [www.bbc.com/news/world-europe-55860540](http://www.bbc.com/news/world-europe-55860540).

<sup>106</sup> See [www.indiatoday.in/coronavirus-outbreak/story/adar-poonawalla-india-bar-serum-institute-export-oxford-astrazeneca-covid19-coronavirus-vaccine-months-1755592-2021-01-04](http://www.indiatoday.in/coronavirus-outbreak/story/adar-poonawalla-india-bar-serum-institute-export-oxford-astrazeneca-covid19-coronavirus-vaccine-months-1755592-2021-01-04).

<sup>107</sup> Simon Tisdall, “In the age of COVID, sanctions against ‘rogue states’ just spread the misery”, op-ed, *The Guardian*, 18 October 2020. Available from [www.theguardian.com/commentisfree/2020/oct/18/in-the-age-of-covid-sanctions-against-rogue-states-just-spread-the-misery](http://www.theguardian.com/commentisfree/2020/oct/18/in-the-age-of-covid-sanctions-against-rogue-states-just-spread-the-misery).

<sup>108</sup> See <https://news.un.org/en/story/2020/08/1069732>.

<sup>109</sup> See <https://www.ohchr.org/Documents/Issues/UCM/UCM-Arria-Formula-meeting.pdf>.

<sup>110</sup> *Ibid.*

<sup>111</sup> ACT-Accelerator frequently asked questions ([www.who.int/initiatives/act-accelerator/faq](http://www.who.int/initiatives/act-accelerator/faq)).

antibody therapies in low- and middle-income countries.<sup>112</sup> WHO continues to assess health system bottlenecks in over 100 States and capacity gaps, under the ACT-Accelerator Health Systems Connector.

37. The COVAX Facility is the vaccine pillar of the ACT-Accelerator. It is aimed at effecting equitable, global access to COVID-19 vaccines by speeding up the search for an effective vaccine for all countries, supporting manufacturing capabilities and buying supply in advance, so that 2 billion doses can be fairly distributed by the end of 2021.<sup>113</sup> Essentially aimed at mitigating the negative effects of hoarding by “self-financing” States, the States that have joined COVAX have agreed not to receive enough doses to vaccinate more than 20 per cent of their respective populations until all countries in the financing group have been offered that amount and to only request enough doses to vaccinate between 10 and 50 per cent of their populations, with the exception of those countries that have opted to receive fewer than 20 per cent.<sup>114</sup> Within that framework there is also an entirely separate funding mechanism, the advance market commitment, which will support access to COVID-19 vaccines for lower-income States.<sup>115</sup> By 19 November 2020, more than 180 countries, representing nearly two thirds of the world’s population, had joined, including 94 higher-income countries, all of which had made legally binding commitments.<sup>116</sup> Although COVAX remains a beacon of hope, and is already realising some of its promise, a number of significant self-financing States, mostly the richer ones, continue to either refuse to join or pursue bilateral purchase agreements with the various manufacturers rather than remain committed to COVAX.

38. Similarly, the COVID-19 Solidarity Response Fund is a WHO and United Nations Foundation initiative, in partnership with the Swiss Philanthropy Foundation.<sup>117</sup> The Fund supports the WHO COVID-19 strategic preparedness and response plan, in particular its goals to track and understand the spread of the virus, to ensure that patients around the world receive the care that they need and that front-line workers receive essential supplies and information and to accelerate research and development of a vaccine and treatments for all who need them. Among the partners supported are the Coalition for Epidemic Preparedness Innovations, the United Nations Children’s Fund (UNICEF), WFP, the Office of the United Nations High Commissioner for Refugees (UNHCR) and the United Nations Relief and Works Agency for Palestine Refugees in the Near East. The Fund has been supported by a wide range of States and corporations, as well as close to 10,000 patients in the United Kingdom of Great Britain and Northern Ireland living with chronic conditions through the DrugStars medication mobile application.<sup>118</sup> The China Population Welfare Fund will channel donations from Chinese companies, charities and individuals towards the Fund.<sup>119</sup>

39. UNICEF projects the delivery of nearly 2 billion doses of COVID-19 vaccines in 2021 to low-income countries under the COVAX initiative.<sup>120</sup> With each dose costing States in the global South no more than \$3, and with the promise of their receiving 1 billion accompanying syringes and needles, those States will each be expected to first vaccinate health-care workers, then other vulnerable groups such as older persons and those living with underlying medical conditions.<sup>121</sup> UNHCR has recognized the contribution of the African Development Bank of over \$20 million towards the forced displacement response in the Central Sahel, as

<sup>112</sup> Ibid.

<sup>113</sup> See [www.who.int/initiatives/act-accelerator/covax](http://www.who.int/initiatives/act-accelerator/covax).

<sup>114</sup> See [www.gavi.org/vaccineswork/covax-explained](http://www.gavi.org/vaccineswork/covax-explained).

<sup>115</sup> Ibid.

<sup>116</sup> Jayati Ghosh, “Is this a vaccine apartheid?”, *Daily Monitor*, 19 November 2020. Available from [www.monitor.co.ug/uganda/special-reports/is-this-a-vaccine-apartheid--3202524](http://www.monitor.co.ug/uganda/special-reports/is-this-a-vaccine-apartheid--3202524).

<sup>117</sup> See [www.who.int/news/item/13-03-2020-who-un-foundation-and-partners-launch-first-of-its-kind-covid-19-solidarity-response-fund](http://www.who.int/news/item/13-03-2020-who-un-foundation-and-partners-launch-first-of-its-kind-covid-19-solidarity-response-fund).

<sup>118</sup> See [www.healthuropa.eu/patients-donate-to-who-covid-19-solidarity-response-fund/103549/](http://www.healthuropa.eu/patients-donate-to-who-covid-19-solidarity-response-fund/103549/).

<sup>119</sup> See [www.who.int/news-room/feature-stories/detail/who-s-covid-19-solidarity-response-fund-receives-financial-support-from-the-china-population-welfare-fund](http://www.who.int/news-room/feature-stories/detail/who-s-covid-19-solidarity-response-fund-receives-financial-support-from-the-china-population-welfare-fund).

<sup>120</sup> Lin Taylor, “Africa: UNICEF says to ship 2 billion COVID-19 vaccines to poor nations in 2021”, *Thompson Reuters Foundation*, 23 November 2020. Available from <https://allafrica.com/stories/202011240038.html>.

<sup>121</sup> John Muchangi, “How Covid-19 vaccines will reach Kenya”, *The Star*, 24 November 2020. Available from [www.the-star.co.ke/news/2020-11-23-how-covid-19-vaccines-will-reach-kenya/](http://www.the-star.co.ke/news/2020-11-23-how-covid-19-vaccines-will-reach-kenya/).



well as the joint contribution of the Inter-American Development Bank and the World Bank of \$2 billion in support of Venezuelan refugees and their host communities, in response to the pandemic, and the World Bank making available \$1 billion from the International Development Association refugee window available on request to refugee hosting countries in the form of grants, not loans.<sup>122</sup> At the regional level, the African Union has secured a provisional 270 million COVID-19 vaccine doses for Africa, through its COVID-19 African Vaccine Acquisition Task Team, the Africa Medical Supplies Platform, on behalf of the Africa Centres for Disease Control and Prevention.<sup>123</sup> The African Union has also signed an agreement with a pharmaceutical company to purchase an additional 400 million vaccine doses.<sup>124</sup> Also in Africa, Economic Community of West African States (ECOWAS) members have agreed to a pooled procurement approach for COVID-19 vaccines, instructing the ECOWAS Commission to set up a vaccine revolving fund and calling upon national Governments, development banks, the private sector and partners to contribute to the fund. The fund will be used to secure COVID-19 vaccines in the region through short-term pooled procurement and medium- to long-term regional manufacture.<sup>125</sup>

40. At the beginning of the pandemic, Cuba sent health aid, in particular its experienced human capital in the medical field, to many States to help in the fight against COVID-19. Italy was the first country to receive 52 Cuban doctors in March 2020, and it received a second group in April 2020.<sup>126</sup> Other States that have received medical personnel support from Cuba include Andorra, Guinea-Bissau,<sup>127</sup> Haiti, Jamaica, Kenya, Mexico, Nicaragua, Qatar,<sup>128</sup> Saint Kitts and Nevis, South Africa,<sup>129</sup> Suriname, Togo,<sup>130</sup> Venezuela (Bolivarian Republic of) and Viet Nam.<sup>131</sup> The Generalitat of Catalonia in Spain also received help from Cuba.<sup>132</sup> By the end of June 2020, Cuba had sent over 3,000 health-care workers to help to fight COVID-19 abroad<sup>133</sup> – an important expression of international solidarity to contain the pandemic, which advanced human rights considerably, and which was undertaken while Cuba was still under sanctions imposed by a global superpower.<sup>134</sup>

41. Other States have also expressed pandemic-related international solidarity in a similar way. Italy received critical medical supplies from China and the Russian Federation.<sup>135</sup> Although China was the first country to be hit by the pandemic, it has sent personnel and supplies of drugs and personal protective equipment to various States across Asia, Africa, Europe and South America. Countries like Algeria, Burkina Faso, Côte d’Ivoire, Djibouti, the Democratic Republic of the Congo, Ethiopia, Nigeria, the Sudan and Zimbabwe have

<sup>122</sup> See [www.unhcr.org/admin/hcspeeches/5f7b0d574/high-commissioners-opening-statement-71st-session-excom.html](http://www.unhcr.org/admin/hcspeeches/5f7b0d574/high-commissioners-opening-statement-71st-session-excom.html).

<sup>123</sup> See <https://africacdc.org/news-item/amp-opens-covid-19-vaccines-pre-orders-for-55-african-union-member-states/>.

<sup>124</sup> See [www.reuters.com/article/us-health-coronavirus-j-j-vaccine/jj-agrees-to-supply-african-union-with-up-to-400-million-covid-shots-idUSKBN2BL0QS](http://www.reuters.com/article/us-health-coronavirus-j-j-vaccine/jj-agrees-to-supply-african-union-with-up-to-400-million-covid-shots-idUSKBN2BL0QS).

<sup>125</sup> See [www.ecowas.int/wp-content/uploads/2021/01/UK-Communique%CC%81-Final-58th-AHSG\\_VF.pdf](http://www.ecowas.int/wp-content/uploads/2021/01/UK-Communique%CC%81-Final-58th-AHSG_VF.pdf).

<sup>126</sup> Sylvia Poggioli, “For help on coronavirus, Italy turns to China, Russia and Cuba”, NPR, 25 March 2020. Available from [www.npr.org/sections/coronavirus-live-updates/2020/03/25/821345465/for-help-on-coronavirus-italy-turns-to-china-russia-and-cuba](http://www.npr.org/sections/coronavirus-live-updates/2020/03/25/821345465/for-help-on-coronavirus-italy-turns-to-china-russia-and-cuba).

<sup>127</sup> Felix Tih, “Cuban medical team in Guinea-Bissau to combat COVID-19”, Anadolu Agency, 29 June 2020. Available from [www.aa.com.tr/en/africa/cuban-medical-team-in-guinea-bissau-to-combat-covid-19/1893700](http://www.aa.com.tr/en/africa/cuban-medical-team-in-guinea-bissau-to-combat-covid-19/1893700).

<sup>128</sup> See <https://english.alaraby.co.uk/english/news/2020/4/18/cuba-sends-medics-to-qatar-to-help-fight-coronavirus>.

<sup>129</sup> See <https://english.alarabiya.net/en/coronavirus/2020/04/27/Coronavirus-Cuban-sends-200-doctors-to-help-South-Africa-fight-COVID-19>.

<sup>130</sup> See [www.togofirst.com/en/health/1304-5331-cuba-sends-doctors-to-help-togo-fight-covid-19](http://www.togofirst.com/en/health/1304-5331-cuba-sends-doctors-to-help-togo-fight-covid-19).

<sup>131</sup> See <https://vietnamtimes.org.vn/covid-19-battle-cuba-gifts-drugs-sends-doctors-to-assist-vietnam-23130.html>.

<sup>132</sup> Carlota Perez, “Cuba sends health aid to 15 countries to fight coronavirus”, Atalayar, 12 April 2020. Available from <https://atalayar.com/en/content/cuba-sends-health-aid-15-countries-fight-coronavirus>.

<sup>133</sup> See <https://english.alarabiya.net/en/coronavirus/2020/04/27/Coronavirus-Cuban-sends-200-doctors-to-help-South-Africa-fight-COVID-19>.

<sup>134</sup> See [www.democracynow.org/2020/3/24/cuba\\_medical\\_diplomacy\\_italy\\_coronavirus](http://www.democracynow.org/2020/3/24/cuba_medical_diplomacy_italy_coronavirus).

<sup>135</sup> Poggioli, “For help on coronavirus”.

received medical experts to help them to fight the COVID-19 pandemic, and more than States have benefitted from webinars by Chinese experts.<sup>136</sup> China has also committed to providing similar international aid over a two year period to Association of Southeast Asian Nations countries.<sup>137</sup> In Latin America, Chinese public and private sector actors have contributed to the COVID-19 response in various countries, with the Government of China providing “an unspecified number of tomographs, defibrillators, antivirals, sedatives and gloves” to the Government of the Bolivarian Republic of Venezuela.<sup>138</sup> The United States of America has provided \$2.2 million to Caribbean countries to “scale up risk communication efforts”.<sup>139</sup> The United States has also sent ventilators to some African countries.<sup>140</sup> The United Kingdom has called upon high-income countries to support global access to COVID-19 vaccines and has provided £500 million (\$684 million) to aid in the distribution of vaccines across the world through the COVAX initiative.<sup>141</sup> Various United Nations agencies have extended significant support to the Bolivarian Republic of Venezuela; UNHCR and the United States provided \$4.65 million in humanitarian assistance; UNICEF has provided \$320,000; the United Nations Population Fund \$400,000; and \$1 million was provided through WHO.<sup>142</sup>

42. On 2 October 2020, India and South Africa applied to the Council for Trade-related Aspects of Intellectual Property Rights of WTO for a “waiver from certain provisions of the [Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement)] for the prevention, containment and treatment of COVID-19”.<sup>143</sup> By that request, they sought the suspension of obligations under the TRIPS Agreement on medical products, including drugs, vaccines, treatments, diagnostics, medical supplies and test data,<sup>144</sup> needed to control the pandemic, with a view to enabling low-income countries to gain access to the tools. Most developed countries have, as at November 2020, opposed the waiver request, whereas most developing countries have supported it.<sup>145</sup> Limiting patent protections for COVID-19 related medical products and services will facilitate access to lower-cost generic versions of COVID-19 vaccines.<sup>146</sup> Just like for the global AIDS epidemic, compulsory licensing can “[alleviate] insufficient supplies of necessary pharmaceuticals as well as [mitigate] prohibitively expensive drug prices”.<sup>147</sup>

43. Some philanthropic institutions across the globe, such as the Jack Ma Foundation,<sup>148</sup> have also responded to the COVID-19 pandemic with support for prevention, treatment,

<sup>136</sup> Nyawira Mwangi, “China’s aid to Africa in fighting COVID-19”, China Global Television Network, 18 June 2020. Available from <https://africa.cgtn.com/2020/06/18/chinas-aid-to-africa-in-fighting-covid-19/>.

<sup>137</sup> Pizaro Gozali Idrus, “China ‘ready’ to include ASEAN in \$2B COVID-19 aid”, Andalou Agency, 29 May 2020. Available from [www.aa.com.tr/en/asia-pacific/china-ready-to-include-asean-in-2b-covid-19-aid/1857846](http://www.aa.com.tr/en/asia-pacific/china-ready-to-include-asean-in-2b-covid-19-aid/1857846).

<sup>138</sup> See [www.wilsoncenter.org/aid-china-and-us-latin-america-amid-covid-19-crisis](http://www.wilsoncenter.org/aid-china-and-us-latin-america-amid-covid-19-crisis).

<sup>139</sup> Ibid.

<sup>140</sup> Tal Axelrod, “Trump adds Africa to growing list of areas US sending ventilators”, The Hill, 25 April 2020. Available from <https://thehill.com/homenews/administration/494646-trump-commits-to-sending-ventilators-to-several-countries>.

<sup>141</sup> See [www.montageafrica.com/the-uk-in-the-push-for-equitable-vaccine-supplies/](http://www.montageafrica.com/the-uk-in-the-push-for-equitable-vaccine-supplies/); and see also [www.wilsoncenter.org/aid-china-and-us-latin-america-amid-covid-19-crisis](http://www.wilsoncenter.org/aid-china-and-us-latin-america-amid-covid-19-crisis).

<sup>142</sup> World Trade Organization, document IP/C/W/669.

<sup>143</sup> Ronald Labonte and Mira Johri, “COVID-19 drug and vaccine patents are putting profit before people”, The Conversation, 5 November 2020. Available from <https://theconversation.com/covid-19-drug-and-vaccine-patents-are-putting-profit-before-people-149270>.

<sup>144</sup> Ibid; see also <https://msf.or.ke/en/magazine/msf-calls-kenya-support-landmark-move-ban-patents-covid-medicines-and-tools>.

<sup>145</sup> Saeed Shah, “Developing countries push to limit patent protections for COVID-19 vaccines”, The Wall Street Journal, 17 September 2020. Available from [www.wsj.com/articles/developing-countries-push-to-limit-patent-protections-for-covid-vaccines-11600355170](http://www.wsj.com/articles/developing-countries-push-to-limit-patent-protections-for-covid-vaccines-11600355170); see also Jobaira Nasrin Khan, “Pharmaceutical patents in the era of COVID-19: the aftermath on developing countries”, Jurist, 10 May 2020. Available from [www.jurist.org/commentary/2020/05/jobaira-khan-pharmaceutical-patents-covid19/](http://www.jurist.org/commentary/2020/05/jobaira-khan-pharmaceutical-patents-covid19/).

<sup>146</sup> Hilary Wong, “The case for compulsory licensing during COVID-19”, viewpoints, *Journal of Global Health*, 19 November 2020. Available from [www.jogh.org/documents/issue202001/jogh-10-010358.htm](http://www.jogh.org/documents/issue202001/jogh-10-010358.htm); see also Inter-American Commission on Human Rights resolution 1/2020, para. 9.

<sup>148</sup> Mwangi, “China’s aid to Africa”.

medical research and livelihood support for vulnerable communities, among other things.<sup>149</sup> Corresponding institutions, such as the Open Society Foundations, have responded by investing millions in providing immediate relief for vulnerable communities struggling against State encroachments on civil rights.<sup>150</sup>

44. In April 2020, the Group of 20 agreed to restructure the bilateral debt of least developed States, freezing repayment obligations to the end of 2020. Its debt service suspension initiative, as well as the mobilization of extra liquidity through the special drawing rights at the International Monetary Fund,<sup>151</sup> is among the United Nations Conference on Trade and Development initiatives that recognized early on the threat to the enjoyment of the right to development by low-income countries created by the COVID-19 pandemic. Debt relief or moratoriums on debt service remains central to a human rights-affirming post-pandemic recovery.<sup>152</sup> The mobilization of financial resources towards combating the pandemic constitutes positive action under the international cooperation obligations imposed by article 44 (1) (c) of the International Health Regulations.<sup>153</sup>

45. Sustaining pre-pandemic humanitarian and technical cooperation, in particular by countries in the global South, and in the context of South-South and triangular cooperation,<sup>154</sup> is an important aspect of international solidarity during and after COVID-19. Such long-existing programmes as the Technical Aid Corps Scheme of Nigeria, which is almost entirely funded by that country,<sup>155</sup> and which funding it has not withdrawn, despite being hard hit by the pandemic, are notable.<sup>156</sup>

46. From the outset of the pandemic, despite some related controversies, China shared virological information on the emerging virus, allowing research institutes around the world to effect what was among the fastest sequencing of the SARS-CoV-2 virus, thereby allowing them to quickly move to developing testing samples. That sharing of virological information and virus samples constituted an international cooperation obligation under article 44 (1) (a) of the International Health Regulations as well as the Pandemic Influenza Preparedness Framework.

## VI. Conclusions

47. In the present report, the Independent Expert has reiterated the central role of the State in any sustainable response to the COVID-19 pandemic and has underlined the international legal obligations for cooperation and solidarity, in terms of health, human rights and peace and security law. He has also articulated the ethical rationale and set out the binding legal bases for calls upon States to recommit fully to international solidarity and ensure that they do not impede their nationals from seeking to act in that regard. The Independent Expert commends the international solidarity actions of various States, multilateral agencies, philanthropic institutions and private sector actors in marshalling human, intellectual, financial and material resources to fight this fast and unsettling pandemic. The Independent

<sup>149</sup> See <https://candid.org/explore-issues/coronavirus>.

<sup>150</sup> See [www.opensocietyfoundations.org/newsroom/open-society-to-increase-commitment-to-global-covid-19-response](http://www.opensocietyfoundations.org/newsroom/open-society-to-increase-commitment-to-global-covid-19-response).

<sup>151</sup> Constant Munda, “UN faults Kenya for ignoring G20 COVID debt relief offer”, *Business Daily*, 6 November 2020. Available from [www.businessdailyafrica.com/bd/economy/un-faults-kenya-for-ignoring-g20-covid-debt-relief-offer-2732218](http://www.businessdailyafrica.com/bd/economy/un-faults-kenya-for-ignoring-g20-covid-debt-relief-offer-2732218).

<sup>152</sup> Inter-American Commission on Human Rights resolution 1/2020, paras. 17–18; and IMF, *World Economic Outlook*, p. xiv.

<sup>153</sup> International Health Regulations, p. 26.

<sup>154</sup> “Preliminary study on enhancement of international cooperation”, conference room paper, para. 14. Available from [www.ohchr.org/EN/HRBodies/HRC/AdvisoryCommittee/Session12/Pages/Index.aspx](http://www.ohchr.org/EN/HRBodies/HRC/AdvisoryCommittee/Session12/Pages/Index.aspx).

<sup>155</sup> *Ibid*, para. 18.

<sup>156</sup> *Ibid*; Wale Adebani, “Government-led service: the Nigerian Technical Aid Corps”, *Voluntary Action*, vol. 7, No. 2.; [www.acp.int/content/news-nigerias-technical-aid-corps-acp-countries-expand-brazil-venezuela-vietnam](http://www.acp.int/content/news-nigerias-technical-aid-corps-acp-countries-expand-brazil-venezuela-vietnam); and Kelechi Deca, “Nigeria can deploy the Technical Aid Corp as weapon of diplomacy”, *Afrikan Heroes*, 6 November 2019. Available from <https://afrikanheroes.com/2019/11/06/nigeria-can-deploy-the-technical-aid-corp-as-weapon-of-diplomacy/>.

Expert notes the disturbing trend witnessed in many parts of the world of the systematic abuse of emergency powers in violation of human rights norms. As importantly, the devastating effects of whole economies, household livelihoods and the personal dreams of billions of people around the world reinvigorate calls for a recommitment to the fight against inequality. The numerous examples of positive expressions of international solidarity, of which only a few could be explicitly discussed in the present report, reaffirm the robustness of the ethical and legal rationales of international cooperation. The Independent Expert has also noted the unfortunate gaps in international solidarity that have been manifested during the pandemic, most concerning of which were actions towards excessive “vaccine nationalism” that involved the hoarding of vaccines and other COVID-19 control products in a way that significantly reduced the chances of controlling and defeating the pandemic as a world community.

## VII. Recommendations

48. **The Independent Expert recommends that States:**

(a) **Urgently withdraw any health-care-related measures and actions that may constitute threats to, or violations of, binding international solidarity, through cooperation, obligations under international law, including under international human rights law and the International Health Regulations, especially any hoarding of vaccines, therapeutics and diagnostics in a way that significantly reduces the chances of the rapid, worldwide control and defeat of the COVID-19 pandemic, given that no State will be safe from the pandemic unless and until all States are safe from it, especially given the distinct possibility of malign mutations of the virus and the spread of such variants through trade and travel;**

(b) **Urgently establish or implement fully the minimum core public health capacities specified in articles 5 and 13 of and annex 1 to the International Health Regulations as a sure measure to prepare for the control of the current and future pandemics, in full respect for human rights, as well as consistent with their international solidarity obligations, and to do so through “collaboration and assistance” as outlined in article 44 and other provisions of the Regulations;**

(c) **Urgently reconsider and reverse any actions, legislative or administrative, that constitute threats to the enjoyment of civil and political rights in the context of the pandemic and especially ensure that the conduct of law enforcement agencies does not unjustifiably impair such rights, and immediately establish or reinvigorate the work of redress mechanisms, both judicial and administrative, to ensure justice for the many victims of abuses of emergency powers implemented by many States in the wake of the pandemic;**

(d) **Withdraw their objections and support the application to the WTO Council for Trade-related Aspects of Intellectual Property Rights for the explicit exemption of COVID-19 diagnostics, therapeutics and vaccines from certain provisions of the TRIPS Agreement to ensure rapid universal access to COVID-19 care and vaccination.**

49. **The Independent Expert recommends that States and multilateral agencies and other actors that lend funds to maintain and possibly expand the current debt suspension regimes and implement debt cancellations, both of which will help to free up the additional resources needed by States in the global South, especially to control the COVID-19 pandemic in the short term, and to stimulate economies struggling with the downturn caused or exacerbated by COVID-19 control measures.**

50. **The Independent Expert recommends that States and multilateral agencies and private partners continue supporting the various WHO-led initiatives, especially COVAX and the ACT-Accelerator umbrella programme, whose three pillars require more than \$23.9 billion in funding in 2021. States and other actors are also strongly encouraged to continue to extend such support to related regional initiatives, such as the COVID-19 Solidarity Fund of the African Union.**