

# Responding to COVID-19: The Extraterritorial Human Rights Obligations Perspective

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Do states have human rights obligations beyond borders to respond to the COVID-19 pandemic? This post argues that states have extraterritorial obligations grounded in international human rights law to respond to a pandemic. It is up to them to demonstrate political will and give effect to these obligations.

It is clear that COVID-19 has effects that go beyond national borders: the right to life and the right to health of everyone on this globe are potentially at risk, and this calls for global responses—the health crisis is a legitimate issue of international concern. These effects are felt in rich countries that have sufficient human, financial and material resources to deal with the crisis. They are also felt in countries in the South with weak, understaffed, underequipped and underfinanced health sectors that do not have enough capacity to treat thousands of patients who often belong to the vulnerable parts of society. Capacity issues are particularly acute for countries with a high foreign debt burden who are unable to afford extra expenses for medical equipment. Similarly, many of these countries do not have enough fiscal space to finance social protection measures for those who have lost their job as a result of the pandemic.

In my view these are human rights issues which require, as a matter of urgency, a response based on international human rights law and global solidarity and cooperation. [Article 55 and 56 of the UN Charter](#) provide for the duty for states to cooperate in solving health problems and promoting universal respect for human rights. [Article 2\(1\) of the International Covenant on Economic, Social and Cultural Rights](#) obliges state parties to cooperate and assist each other in realising the Covenant's rights, among them the right to health. In terms of giving effect to such duties, the notion of extraterritorial human rights obligations, developed over the last two decades, constitutes an important legal and conceptual contribution. To highlight this I want to focus on [The Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights](#), a legal expert opinion adopted in 2011, which lay down a legal normative framework for the implementation of human rights obligations of states for their actions and omissions beyond borders. Principle 8(b) is particularly relevant in this respect as it provides for 'obligations of a global character that are set out in the Charter of the United Nations and human rights instruments to take action, separately, and jointly through international cooperation, to realize human rights universally'. The UN Committee on Economic, Social and Cultural Rights, in its [Statement on the Covid-19 Pandemic](#)

[and Economic, Social and Cultural Rights](#) has said that states parties have extraterritorial obligations related to global efforts to combat COVID-19 (para. 20). I want to highlight a few examples of recent initiatives to respond to the COVID-19 crisis which can be seen through the lens of extraterritorial human rights obligations.

### **Example 1**

The IMF has calculated that Africa will need 105 billion euros for the health sector for the fight against the COVID-19 pandemic. However, only € 65 billion are available. There is thus a deficit of approximately € 40 billion. Last April the [IMF Executive Board](#) decided to grant debt relief for 25 developing states. This does not mean that foreign debts of these countries will be cancelled, something which NGOs had been advocating for. From an extraterritorial human rights perspective it would have made sense if debt cancellation had been agreed upon, in light of the stronger capacity of rich countries for burden-sharing and commensurate with their economic and financial resources and influence in international decision-making procedures (Maastricht Principle 31).

### **Example 2**

Another example is about joint efforts worldwide to develop vaccines for pandemics, such as COVID-19. In 2017 the [Coalition for Epidemic Preparedness Innovations](#) (CEPI) was established. This is a public-private partnership coalition in which philanthropic donors and NGOs also participate. Its mission is to stimulate and accelerate the development of vaccines against emerging infectious diseases and enable access to these vaccines for people during outbreaks in an equitable manner. [Recently](#) 150 countries have engaged in supporting a global initiative for the development of a vaccine for the prevention of COVID-19 infections. This so-called COVAX Facility constitutes a key part of the COVAX pillar of the Access to COVID-19 Tools (ACT) Accelerator, a ground-breaking global coalition to accelerate the development, production and equitable access to COVID-19 tests, treatments and vaccines. COVAX is co-led by the [Vaccine Alliance](#), CEPI and the World Health Organization (WHO), working in partnership with developed and developing country vaccine manufacturers. These initiatives are in line with the general extraterritorial human rights obligation to create an international enabling environment conducive to the universal fulfilment of economic, social and cultural rights (Maastricht Principle 29), and the need for states to coordinate and allocate responsibilities between different actors (Maastricht Principle 30).

### **Example 3**

A final example relates to the initiative launched by the government of Costa Rica, supported by the WHO, to establish a so-called [patent pool](#) for COVID-19. This idea entails that pharmaceutical companies and producers of treatment equipment voluntarily share their patents on medicines, product information and

research data. Governments and companies can then produce cheap generic versions of medicines, tests and treatments to make these available and affordable on a large scale for everyone on an equal basis in all countries. Such a patent pool already exists for other diseases such as hepatitis-C and tuberculosis. The question is of course whether pharmaceutical companies from the North and their home states are willing to share their patents and data knowing that the commercial market for vaccines and antibiotic medicines for the treatment of COVID-19 infections will be a very profitable one. This relates to the tension between intellectual property rights and human rights. From an extraterritorial perspective this example can be seen as an obligation of home states to fulfil the right to have access to essential medicines and treatment, which is a core obligation resulting from the right to health, and to facilitate the transfer of knowledge and capacity to those countries who are in need and have less capacity and resources. Such obligations would follow from Maastricht Principles 31 and 32.

**States need to understand their extraterritorial human rights obligations and demonstrate the political will to give effect to them**

In the current situation of the COVID-19 pandemic the need for international cooperation and international solidarity are usually not seen as a human rights issue by policy-makers and decision-makers, because a recognition of this would entail that states have legal obligations internationally, and not just moral obligations. What is required therefore is an understanding among states that pandemics give rise to extraterritorial human rights obligations and the political will to give effect to them.