



CLAIHR

Canadian Lawyers for International Human Rights
Juristes canadiens pour les droits internationaux de la personne

June 2, 2021

To: The Right Honourable Justin Trudeau, Prime Minister of
Canada
The Honourable Karina Gould, Minister of International
Development

Re: Intellectual Property Waiver of COVID-19 Vaccines

Dear Prime Minister Trudeau and Minister Gould,

I write on behalf of Canadian Lawyers for International Human Rights (CLAIHR). CLAIHR is a non-governmental, charitable organization dedicated to promoting international human rights from a Canadian perspective through legal education, advocacy, and law reform. Advocating for and defending fundamental human rights, as enshrined in the Universal Declaration of Human Rights and other international and domestic human rights instruments, is central to CLAIHR's mission.

CLAIHR is calling on the Canadian government to support the petition spearheaded at the World Trade Organization (WTO) by India and South Africa to waive intellectual property rights and patent laws—as set forth in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement)—on all COVID-19 vaccines and treatments until global herd immunity is achieved. Canada's international law commitments require you to take action to ensure all people have access to critical and life-saving health care.

Over 170 million people have been infected with SARS-CoV-2, with a global death toll exceeding 3.5 million people. An accelerating infection rate resulted in the epicentre of the pandemic shifting to developing countries like India, Brazil, and Mexico. All three countries have since surpassed the United Kingdom and Italy in numbers of confirmed fatalities from the virus. However, the majority of the vaccines being produced are being delivered to wealthy countries—many of which have outstanding orders for far more vaccine doses than they could possibly use.

From its agreements with Moderna and Pfizer alone, Canada will receive 80 million doses of COVID-19 vaccines this year, despite the fact that more than half of Canada's population has been vaccinated or has received at least one dose of a COVID-19 vaccine. By the end of 2020, 96% of the Pfizer–BioNTech vaccines had already been bought by Western nations. In contrast, many developing countries are struggling to secure access to *any* vaccine or are only able to secure contracts for inadequate amounts. On April 9, 2021, Dr. Tedros Adhanom Ghebreyesus, Director-General of the World Health Organization, reported that of the one billion vaccine doses administered globally, only 0.2% were administered to low-income countries. If these glaring inequities in vaccine access continue, it will take at least two years for the world's poorest countries—who cannot afford to compete for early doses of the vaccines—to immunize the majority of their populations.

Medical experts argue that the fight against COVID-19 is a struggle to vaccinate as many people as possible before deadlier or vaccine-resistant variants emerge. Dr. Tedros Adhanom Ghebreyesus explains, “the more transmission, the more variants. And the more variants that emerge, the more likely it is that they will evade vaccines. We could all end up back at square one.” The world is witnessing the death toll inflicted by the current variants, variants that crossed our borders with ease. A slow vaccine rollout significantly threatens to undermine all the progress made in the fight against this virus, placing everyone—not just those in regions with lower vaccine access—at risk of prolonged suffering: business closures, isolation, separation from family, sickness, and

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death. It is difficult to imagine a more pressing time to prioritize the fight against a disease over corporate profit.

Regrettably, however, many of the wealthy WTO member states—including Canada—have failed to support the temporary waiver of the TRIPS Agreement. Consequently, the WTO has yet to agree to waive intellectual property rights enforcement for COVID-19 vaccine patents. CLAIHR is confident that the Canadian government understands that supporting the TRIPS Agreement waiver does not mean that pharmaceutical companies will go unrewarded for their contributions to this fight, as it is projected that Pfizer and BioNTech will sell \$15 billion in Covid-19 vaccines this year. Instead of making billion-dollar companies richer, we need to be vaccinating the billions of people in developing countries at the same pace as in the developed countries of the world. As highlighted by South Africa at the April 22, 2021 TRIPS Council meeting, “If the opposition is just to protect the few more billions these companies will make, then the opposition is self-defeating and short sighted.”

This waiver prioritizes saving human lives over ensuring enormous corporate profits. Enforcing WTO intellectual property laws on pharmaceuticals and medical expertise during a global pandemic is a violation of human rights and is inimical to the global public interest¹. Because COVID-19 vaccines are currently the best way to prevent the spread of the disease and end the pandemic, availability and access to these vaccines are essential to the right to health of all people. The human right to health is recognized by multiple international instruments, including the International Covenant on Economic, Social and Cultural Rights (ICESCR), which stipulates that all *parties* to the covenant “recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” The covenant adds that the steps to achieve this right include those necessary for the “prevention, treatment and control of epidemics...and other diseases” and “the creation of conditions which would assure to all medical service and medical attention in the event of sickness.” Everyone is entitled to “enjoy the benefits of scientific progress and its applications” toward attaining the highest standard of health, without discrimination. Access to pharmaceuticals in the context of the COVID-19 global pandemic is fundamental to guaranteeing the right of every human to the highest attainable standard of health.

When examined from the perspective of the right to health, the TRIPS Agreement waiver proposal is fundamentally a human rights issue. The intellectual property rights protected by the WTO provide pharmaceutical companies with a monopoly over the production of vaccines and medical supplies, which restricts access to life-saving medications for billions across the globe. With the current pandemic, it is impossible to simultaneously enforce intellectual property rights and protect the human right to health. In these circumstances, COVID-19 vaccines should be made affordable and accessible to all, without discrimination.

More than 140 world leaders and experts have signed an open letter demanding that all vaccines, treatments, and tests be patent-free, mass-produced, fairly distributed, and made available to every individual, in all nations, free of charge. In the words of Helen Clark, former Prime Minister of New Zealand, “The COVID-19 vaccine must not belong to anyone and must be free for everyone. Diplomatic platitudes are not enough—we need legal guarantees, and we need them now.” It is imperative that the Canadian government join these world leaders and health advocates to support *a people’s vaccine*, ensuring that human lives are prioritized over the profits of big pharmaceutical corporations. As one of the world’s wealthiest nations, Canada must remember that as long as there is COVID-19 anywhere in the world, the virus remains a threat to everyone around the globe.

The HIV/AIDS epidemic also brought to light the inequalities in access to health care between rich and poor countries. The Western world could afford antiretroviral medications to treat its populations, while essential drugs were priced beyond the reach of developing countries. Patent holders were granted exclusive rights to manufacture these medicines and proceeded to charge a premium significantly in excess of their costs of production. By the time resource-poor regions were able to access the medicines, the death toll from the

¹United Nations Human Rights Council, “Statement by UN Human Rights Experts Universal Access to Vaccines is Essential for Prevention and Containment of COVID-19 around the World,” 9 November 2020, online: <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=26484&LangID=E>.



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HIV/AIDS epidemic had exceeded 10 million in Africa alone. In 2019, over 12 million people living with HIV worldwide did not have access to life-saving antiretroviral treatment, and nearly 700,000 people died of AIDS-related causes. To avoid repeating history, today's world leaders must immediately address the challenges being experienced by low-income countries regarding access to COVID-19 vaccines and treatments.

CLAIHR commends the United States for taking a stance aimed at preventing history from repeating itself by declaring support for the temporary waiver of the TRIPS Agreement. On May 5, 2021, Katherine Tai, the United States Trade Representative, stated that "this is a global health crisis, and the extraordinary circumstances of the COVID-19 pandemic call for extraordinary measures. The administration believes strongly in intellectual property protections, but in service of ending this pandemic, supports the waiver of those protections for COVID-19 vaccines." The United States government also announced that it will actively participate in WTO negotiations in pursuit of the actualization of the waiver. The United States government understands that this is a humanitarian crisis that impacts all of us. It is time Canada does the same.

There is currently a deficit in vaccine supply coupled with an untapped production capacity in developing nations. Intellectual property laws are the principal obstacle preventing developing countries from producing generic vaccines for their own populations. We are now 15 months into the pandemic and there is still no meaningful global policy solution to ensure equitable distribution of vaccines across the world. This is a critical moment in which the Canadian government can be a global force in protecting international human rights, including every individual's right to health, by expediting access to vaccines and treatments for low-income countries via the proposed TRIPS waiver. Pharmaceutical companies must be compelled to share data and expertise on COVID-19 vaccines and treatments—that would otherwise be protected by intellectual property rights—with other vaccine manufacturers, particularly those in low-income and middle-income countries. As one of the world's wealthiest countries, it is Canada's moral responsibility to prioritize human lives and the right to health over the protection of intellectual property rights. It is incumbent upon Canada to immediately support this temporary waiver.

Yours Sincerely,

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