**Vaccine Patents: Healthy or Harmful?**

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During an informal conversation I was asked: *“Why is it that, although so many of us are dying due to COVID-19 and suffering from the dramatic state of the economy, we continue to wait for vaccines despite the availability of so many safe and effective ones? Is it that we cannot produce the vaccines locally?*

The answer to this simple but essential question is that vaccine access is no longer a technical but also a political issue.

While Colombia cannot technically manufacture or produce some COVID-19 vaccines such as those based on the RNA messengers, many other countries, including several in the global South such as India, Argentina or Brazil, could. As has been highlighted by Doctors without Borders, there is no technical obstacle to mass vaccine production that would allow to vaccinate every one of the 7.8 billion human beings on earth within a few months

Instead, the obstacle is legal and political. It is the intellectual property that provides patents to pharmaceutical companies, who have developed COVID-19 vaccines. That creates a temporary monopoly. During such a temporary monopoly period, which usually lasts 20 years, no other company can produce their vaccines without permissions. As a consequence, those companies can impose and regulate the prices and conditions for the production of their vaccines.

Patents are defended by high-income countries, where many large pharmaceutical companies are based. They argue that there would be no innovation without patents as companies would not have incentives to research and develop new products.

Here, I will not dispute this defense of intellectual property, which is highly debatable. I would instead like to pose this question: even if patents were good and helped innovation, is it fair that they remain intact during the COVID-19 pandemic if they prevent rapid access to vaccines all over the world? The answer to this question is no, because we are condemning millions of people to die, but also because the epidemiological risks are extremely high. Each contagion poses a new risk for a novel coronavirus mutation that may eventually result in a variant that could escape the efficacy of current vaccines. It is also possible that a new mutation has a severe impact on the health of children, who have been somewhat spared from the more lethal impacts of COVID-19 until now.

In light of the current situation, without challenging the institution of intellectual property as such, South Africa and India [issued a proposal to the World Trade Organization](https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/IP/C/W669.pdf&Open=True), the international organization overseeing such trade-related issues. They proposed a temporary exemption (or "waiver") of patents on vaccines and treatments for COVID-19 at least until the pandemic is under control. A potential, fair compensation for companies who discovered the vaccines might also been considered, although obviously discounting the immense financial support they have already received from public funding.

This temporary exemption is crucial as current flexibilities in patent rights, such as compulsory licenses, are too rigid and limited to face the current crisis. This waiver provides the only opportunity for companies and States, with sufficient technical capabilities, to mass-produce necessary vaccines without having to fear the severe penalties of patent (intellectual property) violations.

While this proposal continues to face resistance from [certain countries in the Global North](https://msfaccess.org/msf-calls-european-council-enable-global-production-covid-19-medical-tools), it is receiving growing support from [many states](https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/IP/C/W669A9.pdf&Open=True), scientific and humanitarian organizations. Regrettably, the Colombian government has refrained from supporting it, with the shameful argument that more evidence needs to be provided. More evidence of what? Does it not suffice that we currently do not have access to necessary vaccines, although technically we could produce ample amounts? Or that available vaccines are, above all, headed to high-income nations? And is this mainly due to patents on vaccines that, far from being a fair award for innovation, seem to be letters of marque in favor of pharmaceutical companies, without any consideration of deaths and harms caused by the global lack of COVID-19 vaccines?

**ICJ Statements on Vaccine Access:**

**Global:** “[ICJ calls on States to ensure human rights compliant access to COVID-19 vaccines (UN Statement)](https://www.icj.org/icjhrcgd2covid19/)”: (1 March 2021) <https://www.icj.org/icjhrcgd2covid19/>

**Global:** “ICJ urges the UN Committee on Economic, Social and Cultural Rights to call on States to comply with their obligations to ensure equitable access to vaccines for all” (15 Feb 2021): <https://www.icj.org/icj-urges-the-un-committee-on-economic-social-and-cultural-rights-to-call-on-states-to-comply-with-their-obligations-to-ensure-equitable-access-to-vaccines-for-all/>

**Peru:** “The COVID-19 vaccine demands international and national solidarity” (23 Feb 2021): https://www.icj.org/the-covid-19-vaccine-demands-international-and-national-solidarity/

**Africa:** “The ICJ recommends that the African Union acknowledge COVID-19 vaccines are a “public good” (4 Feb 2021): <https://www.icj.org/the-icj-recommends-that-the-african-union-acknowledge-covid-19-vaccines-are-a-public-good/>

**Zimbabwe:** “The ICJ and ZimRights ask for urgent intervention on access to COVID-19 vaccines from African Commission Mechanism” (19 Feb 2021): The ICJ and ZimRights ask for urgent intervention on access to COVID-19 vaccines from African Commission Mechanism

**Further reading:**

**UN Special Procedures:** “COVID-19: UN experts urge WTO cooperation on vaccines to protect global public health” (1 March 2021): <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26817&LangID=E>

**UN Special Procedures:** “Statement by UN Human Rights Experts Universal access to vaccines is essential for prevention and containment of COVID-19 around the world” (9 Nov 2020): <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26484&LangID=E>

**UN CESCR Committee:** “Statement on universal and equitable access to vaccines for the coronavirus disease (COVID-19)” (27 Nov 2020) <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E/C.12/2020/2&Lang=en>

**IACHR and its SRESCER:** “IACHR and its SRESCER Call on American States to Make Public Health and Human Rights the Focus of All their Decisions and Policies Concerning the COVID-19 Vaccine” (5 Feb 2021): <http://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2021/027.asp>