

**AMNESTY
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AMNESTY INTERNATIONAL IRELAND
Seán MacBride House,
48 Fleet Street, Dublin 2, Ireland.

T: +353 1 863 8300
E: info@amnesty.ie

F: +353 1 671 9388
W: www.amnesty.ie

Tánaiste Leo Varadkar TD
Minister for Enterprise, Trade and Employment
Department of Enterprise, Trade and Employment
23 Kildare Street,
Dublin 2,
D02 TD30

21 April 2021

By email

Dear Tánaiste,

Re: Waiver from Certain Provisions of the TRIPS Agreement for the Prevention, Containment and Treatment of COVID-19 (TRIPS waiver proposal)

I write to you ahead of the upcoming informal TRIPS Council meeting on 23 April 2021 to urge Ireland to support the TRIPS waiver proposal and to engage in constructive negotiations with other World Trade Organisation (WTO) member states with a view to adopting the proposal at the next meeting of the WTO General Council on 5 and 6 May 2021. I enclose a briefing for WTO members on this subject.

As you know, there is a global shortage of vaccines, exacerbated by “vaccine nationalism” where rich countries secure bilateral deals for advance purchases of billions of doses of future vaccines for their populations. This leaves limited potential supplies for others, undermines efforts to ensure sufficient availability and inclusive distribution around the world. The shortage is also worsened by intellectual property protections that limit manufacturing and supply.

Predicted global supply is simply too limited to enable the vaccination rate to be increased, a situation worsened by intellectual property protections that limit manufacturing and supply. We continue to face an urgent need for an effective and collaborative multilateral approach for providing universal, fair access to COVID-19 diagnostics, treatments and vaccines in the earliest possible timeframe from previous rhetorical commitments into the reality of shots in arms.

Bilateral deals on vaccines and other products not only benefit higher-income states at the expense of lower-income countries in terms of the availability of doses, but if contracted at high prices to the benefit of companies also undermine the ability of ACT-A and COVAX to secure doses to fulfil their mission.

As a result, only a tiny fraction of people in lower income countries will receive a vaccine in 2021. Inequality of access is thrown into sharp focus by current vaccination statistics. 10 countries have delivered 78% of all vaccinations as of 8 March, while many lower and middle income countries are yet to begin their vaccination programmes. According to the World Health

Organisation, by 5 March 2021, COVAX had delivered around than 20 million doses of vaccine to 20 countries, and its first round of allocations will cover only 2-3% of participating countries' populations.

ACT-A and COVAX, while useful emergency tools, can at best provide a fraction of the total doses of vaccine that are urgently needed to keep COVID-19 at bay, which is particularly important given the new, more easily transmissible variants that have arisen and may arise in the future. Even if COVAX is fully funded this year and all negotiations result in legally binding agreements to supply doses – a big if – many less wealthy countries will only be able to vaccinate around 20-26% of their populations. They do not and cannot, in and of themselves, secure the necessary increase in supply that is needed to ensure that all states can vaccinate sufficient proportions of their populations. The TRIPS waiver proposal does not in any way undermine ACT-A and COVAX, but rather complements them, by enabling a more rapid ramping up of global production.

Contrary to the assertions of some states, the current intellectual property regime has failed to deliver the COVID-19 products in sufficient quantities to those who most need it in a timely fashion. It is the enabling environment provided by public funding, and international collaboration of individuals – scientists and others – that has clarified which treatments are effective and brought effective vaccines to the point of delivery in an unprecedented time. Indeed, there is available evidence that intellectual property rights have already hampered the distribution and access of products and treatments.

While some states claim that existing flexibilities in the TRIPS agreement are sufficient to overcome intellectual property barriers, it is clear that they are not suitable to meet the scale and urgency of the actions required. In practice, the flexibilities are onerous to implement, as they must be applied on a case-by-case basis, covering different aspects of intellectual property including patents, copyright, industrial design, and undisclosed information. To cover all aspects of numerous products will take far too long and consume needed energy and capacity of the public health response. As such, relying on the TRIPS flexibilities alone is unlikely to deliver the required immediate scale-up of production. The TRIPS waiver proposed will provide a framework within which many of such barriers can be eliminated.

It also is important to note that, if the TRIPS waiver proposal is adopted, it will be time-bound for a specified period. Additionally, states can choose not to implement its provisions, if they are able to fulfil their obligations around the right to health, while leaving other states free to use it to meet their own obligations.

On 5 March 2021, Dr Tedros Adhanom Ghebreyesus, the Director General of the World Health Organisation [restated](#) the WHO's explicit support for both the TRIPS waiver proposal – which has the support of the majority of less wealthy countries – and for the COVID-19 Technology Access Pool (C-TAP).

He also [remarked](#) that voluntary licensing have transparency concerns. It may also lead to higher prices for vaccines – as has already been seen with the [prices charged](#) by the Serum Institute of India that has a voluntary licence to produce the AstraZeneca vaccine. Higher prices are a key concern in relation to universal and fair access, since lower- and middle-income countries are taking on huge amounts of debt to fund vaccination programmes which will affect their ability to realise the full spectrum of economic and social rights for their populations for years, if not decades, to come.

I enclose a letter from hundreds of civil society organisations calling on the newly elected Director General of the WTO, Dr Ngozi Okonjo-Iweala, to support the TRIPS waiver proposal. Some WTO Members have submitted a proposal called WT/GC/230i. While the objective of this proposal may be well-intended, the proposed approach is also mainly centred on bilateral agreements controlled by corporate rightsholders.

Every day we are reminded that the COVID-19 pandemic is not only a public health and economic crisis but also a human rights crisis. Engaging constructively in negotiations around the TRIPS waiver proposal, including supporting the move to a text-based discussions, to enable a consensus decision on the proposal, would be a positive step in meeting states' [human rights obligations](#). This step would ensure that intellectual property laws, policies and practices are not a barrier to the enjoyment of the highest attainable standard of health through the provision of COVID-19 health products for all people globally.

I would like to reiterate the comments of civil society organisations in their letter to Dr Ngozi, “[g]lobal supply should not be dependent on the purely commercial prerogatives and exclusive rights of pharmaceutical companies holding the technology. There is simply too much at stake.” As Dr Tedros said so powerfully, “[the TRIPS] provisions are there for use in emergencies. If now is not a time to use them, then when?”. I urge you to heed his call.

I look forward to your response and would be grateful for an opportunity to discuss this most urgent and important matter further with relevant officials.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Colm O'Gorman', with a stylized, sweeping flourish at the end.

Colm O'Gorman
Executive Director

Cc: Minister Stephen Donnelly TD, Minister for Health, Department of Health; Minister Simon Coveney TD, Minister for Foreign Affairs, Department of Foreign Affairs; Minister Colm Brophy TD, Minister for Overseas Development Aid and Diaspora, Department of Foreign Affairs; Maurice Quinlivan TD, Chair, Oireachtas Joint Committee on Enterprise, Trade and Employment; Charles Flanagan TD, Chair, Oireachtas Joint Committee on Foreign Affairs and Defence; Mr Tom Sheridan, Clerk to the Oireachtas Joint Committee on Enterprise, Trade and Employment; Noel Murphy, Clerk to the Oireachtas Joint Committee on Foreign Affairs and Defence.