

Intellectual Property Cause of Death, Genocide

Refusal to temporarily suspend several World Trade Organization (WTO) intellectual property (IP) provisions to enable much faster and broader progress in addressing the COVID-19 pandemic should be grounds for International Criminal Court prosecution for genocide.

Making life-saving vaccines, medicines and equipment available, freely or affordably, has been crucial for containing the spread of many infectious diseases, such as tuberculosis, HIV/AIDS, polio and smallpox.

Jonas Salk, who developed the polio vaccine in 1955, insisted that it remain patent-free. Asked who owned the patent, he [replied](#), ‘The people I would say. There is no patent. You might as well ask, could you patent the sun?’

Intellectual Property Induced Scarcity

However, cross-border enforcement of intellectual property rights (IPRs) is relatively recent. The 1994 WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) greatly strengthened and extended IP transnationally. IPRs have effectively denied access to patented formulas and processes except to the highest bidders.

Recognising the extent of the pandemic threat, vaccine developers expect it to be very [profitable](#), thanks to national and transnational IP laws. Thus, IP has [distorted](#) research priorities and [discouraged](#) cooperation and knowledge sharing, so essential to progress.

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As COVID-19 infections and deaths continued to rise alarmingly, rich countries fell out among themselves, fighting for access to vaccine supplies as IP profits took precedence over lives and livelihoods.

‘[Vaccine nationalism](#)’ involved cut-throat contests responding to scarcity due to limited output. Facing vaccine wars, multilateral arrangements, such as [COVAX](#), did not adequately address the current challenges.

Vaccine nationalism also meant that among the rich, the powerful—Trump’s US—came first. Consequently, most developing countries and most of their people would have to wait longer than necessary for vaccines, while the powerful and better-off secured prior access, regardless of need or urgency.

Lethal Combination

This lethal combination of IP and vaccine warfare was responsible for more avoidable losses of both lives and livelihoods. Developing nations, especially the poorest and most vulnerable, were [left far behind](#), even in most programmes for COVID-19 prevention, containment, treatment and vaccination.

The deadly duo of IP and vaccine warfare unnecessarily delayed the end of the pandemic, causing avoidable infections, deaths and related setbacks. World Health Organization (WHO) Director-General (DG), Tedros, [warned](#) ‘the world is on the brink of a catastrophic moral failure ... the price of this failure will be paid with lives and livelihoods in the world’s poorest countries’.

He advised that ‘the international community cannot allow a handful of companies to dictate the terms or the timeframe for ending the pandemic’; ‘vaccine nationalism combined with a restrictive approach to vaccine production is in fact more likely to prolong the pandemic ... tantamount to medical malpractice on a global scale’.

While over 39 million vaccine doses had been given in forty-nine richer countries by the end of 2021, only twenty-five doses had reached one poor country! At current rates, more than [eighty-five poor countries would not have](#) significant access before the end of 2023! In seventy lower-income countries, [only one in ten](#) would be vaccinated.

[Of the 7.2 billion](#) confirmed sales of COVID-19 vaccine doses, 4.2 billion went to the wealthiest nations. With only 16 per cent of the world’s population, high-income countries secured 60 per cent of available doses. Meanwhile, the African Union procured only 670 million for the continent’s 1.3 billion people.

Public Health Exception

Following strong advocacy led by South African President Mandela, a 2001 WTO [Declaration](#) on TRIPS and Public Health affirmed countries' right to protect public health by enabling access to medicines, even without a health emergency.

Although TRIPS now allows such government public health efforts, [developing countries remain constrained](#) by compulsory licensing's complex rules, procedures and conditions. Threats and inducements by transnational corporations and their governments limit its use.

Hence, the use of [compulsory licensing by developing countries](#) has been [largely limited](#) to several more independent middle-income countries and HIV/AIDS medicines.

TRIPS Waiver

The TRIPS waiver proposal to the WTO—led by South Africa and India—sought temporary suspension of several TRIPS provisions to greatly scale up the production of and access to COVID-19 vaccines, medicines and equipment to contain the contagion.

The Trump administration, the European Union (EU) and their allies [blocked the waiver](#) proposal, although its measures were allowed by their [own national laws](#). [Some rich countries](#) even [increased](#) such provisions with the pandemic.

South African TRIPS negotiator, Mustaqeem Da Gama, [debunked the waiver opponents' claim](#) that even if 'approved tomorrow, there are no companies in the developing world that can produce any number of products relevant to COVID-19, including mRNA vaccines'.

In fact, the [Serum Institute of India](#) was acknowledged as the only facility in the world with the mass vaccine production capacity to rapidly greatly scale up output. Furthermore, 72 of the 154 vaccines 'pre-qualified' by the WHO were already being manufactured in developing countries.

Such production in developing countries was subject to very restrictive IP regulations and licensing agreements with stringent conditions. Hence, existing capacity in India, China, Brazil, Cuba, Thailand, Senegal and Indonesia, among others, remained underutilised, primarily due to such legal barriers.

IP Main Barrier

Despite growing support for the waiver, the proposal was rejected by the TRIPS Council on 4 February 2021. The EU insisted that IP would 'ensure the publication and dissemination of research results, when otherwise they will remain secret'.

But everyone knows that the IP system discourages rather than encourages cooperation and sharing, which are both essential for accelerating progress. Although IP requires sharing research results, no vaccine developer has done so yet. Nonetheless, waiver opponents insisted that the system was working well.

Rich countries opposing the waiver quietly, even secretly, bought up vaccines. Even as the EU lost the vaccine wars despite furthering pharmaceutical company interests, it claimed the moral high ground as a major COVAX donor. The recent EU export authorisation scheme, which restricted exports, was bound to trigger retaliatory restrictions by others.

Incredibly, rich countries opposed to the TRIPS waiver proposal, particularly the EU, then wanted WTO members to instead accept its trade and health initiative for further trade liberalisation and removal of export restrictions—to address a problem of its own making!

Biden Could Still Have Led

The Biden administration showed renewed commitment to multilateralism by rejoining the WHO, but still needed to offer leadership beyond funding the [ineffective COVAX](#) scheme and lifting Trump's embargo on exports of vaccines, vital medicines and equipment.

One 'people's vaccine' [proposal](#) involved sharing research results in return for public financing. This would have greatly scaled up production of affordable generics, quickly enabling 'vaccines for all' in the world at little additional cost.

As rich-country governments had already spent much to accelerate vaccine development, they could have more easily made this happen. Since vaccine developers did not expect to profit much from selling to the poor, this would have benefited many at little added expense.

Depriving and delaying vaccines for those with less means has to be seen for what it is. Such avoidable behaviour is, frankly, nothing less than genocidal, in causing many people to die needlessly for IP profit.

At the 23 February 2021 TRIPS Council meeting, US President Biden could have secured consensus support for the waiver proposal, thus providing the Rooseveltian leadership internationally that he seemed to be trying to emulate in the US.

Originally published 8 February 2021

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