

Honourable Chancellor,

Dear Ms. Merkel,

We, the undersigned human rights organizations and networks committed to advancing human rights and dignity of people worldwide, are writing to you with urgency in light of the upcoming regular meeting of the WTO TRIPS Council scheduled on 8-9 June 2021.

As we witness the COVID-19 pandemic continue to ravage countries around the world with alarm, we appeal to your Excellency to take a leadership role in protecting the global right to life and health by supporting a Trade-Related Aspects of Intellectual Property Rights (TRIPS) waiver as requested by numerous developing countries. Global health rights advocates have identified the issuance of such a TRIPS waiver as a crucial step towards ensuring access to preventive, treatment and other health technologies for COVID-19 for developing countries (upper-middle, and lower-middle-income and lowincome).

A crisis of this proportion will not end if each country focuses on protecting its own population alone. Public investment in the development of COVID-19 health products and technologies necessitates that they be qualified as global public goods, available universally as a matter of human rights. However, current Intellectual Property (IP) barriers (including trade secrets) unacceptably hinder the realization of this objective. Thus, Germany acts in the interest of everyone when it supports measures to radically increase the availability and manufacturing of COVID-19 vaccines and treatment solutions worldwide.

Countries in Asia, South America and Africa -- in particular their marginalized and vulnerable populations -- have been most affected due to the recurring wave(s) of COVID-19 triggered by deadly variants. While the High Income Countries (HIC) are inching towards the halfway point on providing a first dose of vaccine to their population (49% in US, 57% in UK, 55% in Canada, 43% in



Germany), developing countries report alarmingly lower rates of vaccination (12% in India, 7% in Nepal, 3.5% in Bangladesh, 1.08% in South Africa, 0.73% in Sudan). As a result, for instance, in India, an average of over 4000 people (by official counts) have died every day due to COVID-19 in May 2021 alone.

India and South Africa, supported by over 100 nations, have proposed a TRIPS waiver of IP barriers for at least three years on “health products and technologies including diagnostics, therapeutics, vaccines, medical devices, personal protective equipment, their materials or components, and their methods and means of manufacture for the prevention, treatment or containment” of COVID-19 (hereinafter, COVID-19 solutions).

The TRIPS waiver, by democratizing production and availability of COVID-19 solutions, will remove a key impediment to developing countries’ ability to ensure the fundamental right to health within their borders. It will allow countries such as Argentina, Bangladesh and India to utilize their own full production facilities to produce and supply generic COVID-19 solutions for the world. Furthermore, rather than stifling innovation, as the pharmaceutical industry claims, such a waiver will foster further developments responsive to the virus’ spread across diverse populations crucial for containing the pandemic which will serve the global population in responding to future pandemics.

States have a universal obligation to guarantee the “highest attainable standard of health.” The UN Committee on Economic, Social and Cultural Rights has called upon state parties to “promote flexibilities or other adjustments in applicable intellectual property regimes to allow universal access to the benefits of scientific advances relating to COVID-19 such as diagnostics, medicines and vaccines.” The waiver is a foundational step in realizing these obligations.

Indeed, unprecedented public financing was crucial to the research and development of these vaccines and other COVID-19 solutions. However, by locking away the publicly funded research innovations of the vaccines and other treatment solutions under the cover of IP rights, a global public good is effectively transformed into private property. Germany must avoid aligning with the

narrative espoused by global pharmaceutical companies and other HICs that IP rights are crucial for fostering further innovation in the global fight against COVID-19. Germany, by virtue of ratification of the International Covenant on Economic, Social and Cultural Rights is obligated to prevent monopolistic intellectual property and patent legal regimes from undermining the enjoyment of economic, social and cultural rights globally.

The United States, home to some of the largest vaccine producing companies, have therefore also indicated their support for the proposed waiver, albeit as to vaccines alone. The US President has rightly stated that “the extraordinary circumstances of the COVID-19 pandemic call for extraordinary measures.” These extraordinary measures must be expansive to cover the entire ecosystem of COVID-19 solutions as proposed in the waiver request.

Unfortunately, Germany has not yet supported the proposed waiver. In order to stay in line with Germany’s stated interest to advance human rights and its call for a “cooperative, transparent, science-based and coordinated global response” in fighting COVID-19, Germany must support the waiver. Given the important role of Germany within the European Union and the WTO, a failure to support the proposed waiver will not only prolong the pandemic in developing countries and all over the world, it would also violate its international extraterritorial human rights obligations. We strongly urge you to reconsider the position.

Your Excellency, we therefore respectfully request you to:

1. Unconditionally support the TRIPS waiver at WTO for COVID-19 solutions as proposed by India, South Africa and other nations.
2. Call upon other EU member-states and other nations to vote in favor of the waiver in a time-bound manner.
3. Insist on a transparent negotiation mechanism for finalizing a waiver text that will ensure equitable access to the COVID-19 solutions in the developing world.