



HUMAN  
RIGHTS  
WATCH

## “Whoever Finds the Vaccine Must Share It”

Strengthening Human Rights and Transparency around Covid-19 Vaccines

## SUMMARY AND KEY RECOMMENDATIONS

*We lost colleagues. Others were intubated. It was really scary.... [I am] praying to have a vaccine soon.*

—“FERNANDA”, NURSE AT A PUBLIC HOSPITAL IN CEARÁ STATE, BRAZIL, JULY 28, 2020

*Whoever finds the vaccine must share it. This is a global responsibility and it's a moral responsibility for a vaccine to be shared far and wide. Some might see short-term advantage or even profit, but I assure you, to anyone who may think along those lines, humanity will have a very long memory, and be a very, very severe judge.*

—SCOTT MORRISON, PRIME MINISTER, AUSTRALIA, SEPTEMBER 26, 2020, 75TH UNITED NATIONS GENERAL ASSEMBLY

## SUMMARY

The Covid-19 pandemic is among the gravest global health and economic crises in history. By mid-October 2020, it had taken the lives of more than a million and infected at least another 38 million, leaving many of them severely ill. Its social and economic consequences have been widespread and devastating. There is a growing movement of advocates, including Covid-19 survivors and loved ones of those who died, calling for a “people’s vaccine.”

World over, people are pinning their hopes on potential Covid-19 vaccines. The race to develop Covid-19 vaccines has made headlines nearly every day since the World Health Organization (WHO) first described Covid-19 as a pandemic in March 2020. By mid-October 2020, more than 40 vaccine candidates were in clinical trials, and more than 150 others were in earlier stages. Of the top 10 vaccine candidates in the final phase of clinical trials, companies or research institutes headquartered in China, Germany, Russia, the United Kingdom, and the United States were involved in developing them.

Municipal health workers conduct rapid coronavirus testing in a favela in Rio de Janeiro, Brazil in September 2020.

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Universal and equitable access to a safe and effective Covid-19 vaccine is critical to ending the pandemic, or if no vaccine provides absolute immunity, preventing severe illness and death while protecting livelihoods and allowing battered economies to recover from the consequences of the pandemic.

Governments—especially high-income countries that can afford to do so—are using public money to fund Covid-19 vaccines on an unprecedented scale, with more than US\$19 billion pledged by mid-September 2020. In mid-October 2020, the World Bank’s board of directors approved US\$12 billion in financing for Covid-19 vaccines, testing, and treatment.

In the high stakes race for a potential vaccine, commitments to meet human rights obligations and transparency have been largely absent. Funding of Covid-19 vaccines with public money has been mired in secrecy. Rich governments that can afford to do so are negotiating opaque bilateral deals with pharmaceutical companies or other entities, often reserving future doses of vaccines largely for their exclusive use.

Secret deal-making and hoarding future vaccines in a climate where vaccines are widely projected to be in scarce supply—an approach often described as “vaccine nationalism”—have dealt massive blows to any global vision for universal and equitable access to an affordable vaccine and risks leaving people from low- and middle-income countries to pick through whatever is left after rich countries have served themselves. As Fatima Hassan, a South African human rights lawyer and intellectual property (IP) rights expert said, “How vaccines are distributed will expose the divides by race, class, and economic power.”

Bridging these divides in a way that respects the human rights of all is urgent and central to the world’s collective recovery from the pandemic. Human Rights Watch has carried out research examining the rights implications surrounding Covid-19 vaccine availability and affordability. Between April 23 and October 13, 2020, Human Rights Watch had discussions with more than 15 renowned experts on access to medicines, IP, and human rights; analyzed international human rights law and relevant national legal good practices; and reviewed a vast array of publicly available documents and secondary sources. This included epidemiological data; statements and resolutions by the WHO and the UN; reports or other documents by nongovernmental organizations (NGOs), pharmaceutical companies, multi-stakeholder initiatives, and others; media reports; and files from legal proceedings. Human Rights Watch also drew on more than six months of reporting on the pandemic’s impacts on different populations, including health workers.



A health worker treats a patient believed to have Covid-19 in a restaurant that was converted into a clinic in Bishkek, Kyrgyzstan in July 2020.

© 2020 Vladimir Voronin/AP Photo

A doctor examines an older resident at a nursing facility in Madrid, Spain, during the country's Covid-19 lockdown, in April 2020.  
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This report examines key elements of a human rights-based approach to Covid-19 vaccines funding rooted in principles of transparency and accountability. It assesses how a variety of core rights—including but not limited to the rights to life, health, and an adequate standard of living—are being taken into account by governments. Human Rights Watch argues that governments spending public money on Covid-19 vaccines should take all possible measures within their power to ensure the scientific benefits of the research they fund are shared as widely as possible “to prevent the unacceptable prioritization of profit for some over benefit for all” and to maximize vaccine availability and affordability within the shortest possible time. While transparency has many aspects, this report looks closely at why governments should report transparently on their funding agreements, terms, and conditions. The concerns and recommendations Human Rights Watch raises in this report, particularly around barriers related to technology transfer and IP, and pricing, are relevant for other Covid-19 health technologies, including testing and drugs, but this report does not cover those areas.



A nurse in Caracas, Venezuela prepares bottles with soap, chlorine, and water at the entrance of the health facility where she cares for patients with suspected Covid-19. Like most people in Caracas, she often lacks running water and has to fill buckets in a public tap to do daily disinfection after work to protect her son and grandson, who live with her.

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People in Brooklyn, New York wait in line to receive free food from a food pantry in May 2020, as unemployment claims rose during the Covid-19 outbreak.

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Patients waiting outside a hospital for coronavirus testing in Dhaka, Bangladesh on May 16, 2020.  
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A medic checks the temperature of a man inside a health isolation center established on the Syrian-Turkish border as a preventive measure against the spread of Covid-19.  
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## “Sharing the Vaccine Recipe”

*Right now, we are in the position where one corporation that is publicly funded may eventually discover or may eventually come across the vaccine recipe and that one corporation will not be able to supply the world. So it's clear that there is a moral obligation on that corporation to share that recipe so all vaccine manufacturers in the world, so everyone who can, does start making the vaccine.*

—ZAIN RIZVI, LAW AND POLICY RESEARCHER, PUBLIC CITIZEN, JULY 24, 2020

High-income governments are using public money to preorder future vaccine doses in ways that undermine universal and equitable vaccine access. This has been with patent disregard for governments' human rights obligations to cooperate internationally to share the benefits of scientific research they fund with public money to protect the rights to life, health, and a decent standard of living in a globalized world.

The UN Committee on Economic, Social and Cultural Rights, the body of experts that monitors implementation of the International Covenant on Economic, Social and Cultural Rights by its states parties stated in April 2020, “[P]andemics are a crucial example of the need for scientific international cooperation to face transnational threats ... [i]f a pandemic develops, sharing the best scientific knowledge and its applications, especially in the medical field, becomes crucial to mitigate the impact of the disease and to expedite the discovery of effective treatments and vaccines.... The Committee reiterates that ultimately, intellectual

property is a social product and has a social function and consequently, States parties have a duty to prevent unreasonably high costs for access to essential medicines.”

The funding amounts pledged and doses prebooked are frequently changing with new developments. The shifting environment is further complicated by a near total lack of transparency. Governments do not publicly disclose the terms and conditions of their funding, what they have prebooked and for whom, and which manufacturing facilities will be used to supply their preorders. NGOs, researchers, and journalists are piecing together this data.

For example, Policy Cures Research, an Australia-based global health think tank, estimated that by mid-September 2020, the US, Germany, the UK, Norway, South Korea, Saudi Arabia, Canada, China, and Spain were the top nine governments, together with the European Commission, funding vaccine research and development, either directly through bilateral deals or indirectly by funding vaccine public-private partnerships like the Coalition for Epidemic

Preparedness Innovations (CEPI). In September 2020, Oxfam International analyzed available information on deals made for five of the nine vaccine candidates that were in the final phase (“phase 3”) of clinical trials at that time. They estimated that 51 percent of the doses were reserved for high-income countries including Australia, Hong Kong & Macau, Israel, Japan, Switzerland, the UK, the US, and the European Union, even though they represent only 13 percent of the world’s population.

World leaders and experts have been clamoring for global cooperation and sharing of health technologies since the early days of the pandemic. Leading groups and experts on access to medicines who are following the funding and procurement efforts, including the European Public Health Alliance, I-MAK, Knowledge Ecology International, Médecins Sans Frontières (MSF) (Doctors without Borders), Oxfam, the People’s Vaccine Alliance, Public Citizen, South Centre, and the Third World Network, have repeatedly raised concerns that governments are not acting in ways that will ensure



A woman from Barcelona's street vendors union sews protective face masks to donate to health care workers whose supplies were running low, March 2020.  
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potential future Covid-19 vaccines will be a “global public good” accessible to all.

In May 2020, the Costa Rican government spearheaded a Solidarity Call to Action with the WHO to create the Covid-19 Technology Access Pool (C-TAP)—a common shared pool of rights to technologies, data, and know-how that everyone around the world could use to manufacture any medical products needed to tackle Covid-19, including vaccines. At time of writing, only 40 other governments had endorsed the C-TAP Solidarity Call to Action; most of them from low- or middle-income countries. The vast majority of high-income countries have yet to align with the principles and spirit of C-TAP.

Open and non-exclusive licensing unleashes the potential of scientific research that uses public money to maximize public benefit, preventing any one company from holding or controlling access to the data, know-how, and IP required to manufacture vaccines. Governments should use their regulatory powers to require companies and other entities to



Women wait in line for food in Nairobi, Kenya during Covid-19-related movement restrictions.  
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share data, know-how, and IP, including through open and non-exclusive licensing, to avert a scenario that could, as Fatima Hassan described it, allow drug companies to “play god” and “decide who gets a vaccine and when.”

This is especially important to expand global vaccine manufacturing capacity wherever possible, including in the long-term. As Third World Network, an NGO, has shown through its “VaxMap,” the expertise to manufacture vaccines is limited and highly skewed toward rich countries. Large parts of Africa, Asia, and Latin America do not have any significant manufacturing capacity and will likely depend on imports. Only a handful of countries in these parts of the world have vaccine manufacturing capacity: Argentina, China, India, Brazil, South Korea, and Singapore.

High-income governments have blithely ignored the repeated concerns raised by low- and middle-income countries about the significant barriers presented by IP, disregarding historical experience and lessons, especially from the struggle to overcome IP barriers for generic and

Police officers arrest doctors and paramedics protesting against the lack of protective equipment during the government-imposed Covid-19 lockdown, in Quetta, Pakistan in April 2020.

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affordable treatment for HIV/AIDS. This approach fails to learn lessons from past vaccine efforts and the links between pricing and IP, ignores expert opinions by IP rights lawyers, and disregards the growing risk of lawsuits challenging the IP of companies involved in Covid-19 vaccines. Voluntary corporate commitment to open and non-exclusive licensing has been low, making government use of regulatory tools essential to ensure vaccines are widely available.

In October 2020, India and South Africa proposed that some provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) be waived, to allow all countries globally to collaborate with one another, without running into the morass of laws and restrictions governing IP. If adopted, the proposal could enable the sharing of technology and know-how to expand access to the medical technologies needed to save lives and prevent severe illness during the pandemic. Human Rights Watch called on all other governments to support the proposal of India and South Africa.

The time to move beyond rhetoric around global cooperation is now. As James Love, director of the NGO Knowledge Ecology International, said: “It doesn’t take a genius to figure out that vaccines will be in short supply in the short-term. But why make it worse? Giving companies monopolies over vaccines in the middle of a pandemic is criminal.”

All governments should take concrete steps to endorse the C-TAP Solidarity Call to Action and develop a collective strategy to implement it. Governments should cooperate to urgently map out what vaccine manufacturing capacity exists, what has been booked up and for whom, and develop a plan of action to scale-up manufacturing to maximize the availability, affordability, and distribution of any successful vaccine. They should do so in consultation with low- and middle-income governments as well as experts on access to medicines, vaccines, IP, and human rights. Governments should also use their regulatory powers and funding clout to enable technology transfers and sharing of data, know-how, and other IP through open and non-exclusive licensing.



Students in Bangkok, Thailand wear face masks, sit at desks with plastic screens, and practice social distancing as schools reopen in August 2020 after Covid-19-related closures.

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## Making Vaccines Affordable for All

Thus far, some companies, universities, and institutes producing vaccines have given vague assurances of “non-profit” pricing and even provided pricing estimates. The estimates reported vary from as little as US\$3 per dose to US\$72 per dose. Most potential Covid-19 vaccines are expected to require two doses per person, and unlike some other vaccines, Covid-19 vaccines likely will not be once-in-a-lifetime. They will generate recurring expenses and be particularly financially burdensome for low- and middle-income governments as well as those living in poverty.

Regulating prices to maximize affordability is especially important because in many contexts, vaccines will only be accessible and affordable for communities if they are free at point of care. Worldwide, nine percent of the world’s population lives in extreme poverty, surviving on less than US\$1.90 per day. In June 2020, the World Bank projected the pandemic could push between 70 and 100 million people into extreme poverty—living on less than US\$1.90 a day—in 2020. The pandemic is also projected to widen the poverty gap between women and men and drive a 9.1 percent increase in poverty among women.

Governments have a human rights obligation to take measures, individually and collectively, to ensure companies, universities, and other entities receiving public money use it in ways that maximize vaccine affordability for the benefit of people globally. To this end, governments should use their powers to ensure vaccines are not sold to the highest bidder to maximize profits. Governments should require transparent pricing and third-party audits that demonstrate the company or university has maximized affordability and minimized debt for low- and middle-income countries.



A man in Soweto, South Africa receives an injection as he participates in clinical trial for a Covid-19 vaccine in June 2020.

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An older woman looks on from her window in Barcelona, Spain in April 2020 during the country's strict Covid-19 lockdown.

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## Global Vaccine Procurement Mechanism: COVAX Facility

There is growing interest from many governments—low-, middle-, and high-income—to purchase vaccines through a global procurement mechanism called the COVAX Facility. The COVAX Facility implemented by Gavi, the Vaccine Alliance—a public-private partnership—is operating subject to the preorder vaccine deals rich governments have already signed. The facility has yet to publish its contracts with companies and other entities. It has not endorsed C-TAP or taken steps to enable wide-ranging technology transfers or address IP barriers through open, non-exclusive licensing. Gavi estimates each vaccine dose supplied by COVAX will cost about US\$10.55 and—for two vaccine doses per person—will total more than US\$20 per person. Gavi has yet to require transparent pricing coupled with third-party audits to ensure companies producing vaccines for the COVAX Facility are maximizing affordability of vaccines.

## Committing to Transparency

People have a right to know how governments spend public money. They have a right to know what measures governments are taking to protect public health and ensure public money is used for public benefit. But governments have yet to disclose even the key terms and conditions under which they have funded companies, universities, and other entities for Covid-19 vaccines.

Transparency is crucial to hold governments accountable for fulfilling their international human rights obligations both within their own borders and beyond them. As Safura Abdool Karim, a senior researcher and health lawyer from the South African Medical Research Council's Centre for Health Economics and Decision Science said, "Transparency is so pivotal... We need to know what bilateral deals have been made, what are the preferential terms, and if there are any equitable access terms in these agreements. ...Even the poorest of poor should be able to have access to a vaccine at an affordable price."



An aerial photograph of a burial in April 2020 in Manaus, in the Amazon forest in Brazil, where people who died of suspected or confirmed Covid-19 are buried.

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The stakes have never been higher. Universal and equitable vaccine access is needed to save lives, protect health workers, prevent people from experiencing severe illness and potential long-term negative health impacts, ensure children return to school, and enable economies to rebuild and families to make ends meet. The lives and livelihoods of billions of people are on the line.



Twenty thousand empty chairs placed on the National Mall in Washington, DC in October 2020 to represent the more 200,000 people who died of Covid-19 in the United States.

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# KEY RECOMMENDATIONS

## TO ALL GOVERNMENTS

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- Endorse and implement the WHO's COVID-19 Technology Access Pool (C-TAP).
- Collectively map out the global capacity to manufacture the needed supply of Covid-19 vaccines, and cooperate to develop a strategy to fund and support the creation of additional manufacturing capacity especially in low- and middle-income countries to ensure rapid and diversified large-scale production.
- Pledge not to sign bilateral deals with vaccine developers to prebook future vaccine doses in ways that undermine equitable global allocation according to public health need.
- Support India and South Africa's October 2020 proposal at the World Trade Organization to waive some provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) and use TRIPS flexibilities at the country-level.

## TO GOVERNMENTS FUNDING COVID-19 VACCINES

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- Commit to transparency around Covid-19 vaccine funding by creating a public database of all contracts for funding related to Covid-19 vaccine research, development, manufacturing, or distribution.
- Attach concrete conditions to all funding for Covid-19 vaccine research, development, manufacturing, or distribution requiring technology transfer, that is, recipients should share all intellectual property (IP), data, and other know-how to enable mass manufacturing of successful vaccine candidates. Specifically, ensure agreements to fund Covid-19 vaccines, at a minimum, require recipients to provide open, non-exclusive, and royalty-free licensing for pre-existing IP owned and any future owned IP modeled on the "Open COVID Pledge."
- Attach concrete conditions to all vaccine funding to ensure vaccines are priced transparently, and to prioritize affordability and minimize any debts for low- and middle-income countries and not profits for vaccine-developers. Specifically, ensure agreements to fund Covid-19 vaccines, at a minimum, require that compliance with vaccine price commitments is verified through an independent third-party financial audit and the audit report be published.

## TO GOVERNMENTS PARTICIPATING IN THE COVAX FACILITY

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- Call on Gavi and CEPI to endorse and design the COVAX Facility in a way that is aligned with the WHO's C-TAP.
- Call on Gavi and CEPI to publish all agreements with vaccine developers and manufacturers.
- Call on Gavi and CEPI to attach conditions to their funding related to technology transfers; open and non-exclusive licensing; and transparent and affordable pricing, verifiable by independent third-party audits that are made public.

## TO UN ORGANIZATIONS

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- Take measures to promote and facilitate technology transfers of any successful Covid-19 vaccine to make it as widely available as possible.
- Take measures to ensure any successful vaccine is priced affordably and made accessible to all vulnerable populations.



## “Whoever Finds the Vaccine Must Share It”

### Strengthening Human Rights and Transparency around Covid-19 Vaccines

Equitable access to a safe and effective Covid-19 vaccine on a global scale could be critical to enable governments in all countries to prevent severe illness and death while protecting livelihoods, getting children back to school, and enabling economic recovery.

“*Whoever Finds the Vaccine Must Share It*” examines how governments are using public money to fund Covid-19 vaccines on an unprecedented scale, with some pre-booking vaccines in opaque deals with pharmaceutical companies, universities, or research institutes. This approach raises a number of questions and concerns: Will low- and middle-income countries get access to vaccines? How, when, and at what cost?

This report outlines the human rights obligations of governments and urges them to maximize equitable access and affordability worldwide. To protect the global population’s rights, including to life, health, and a decent standard of living, all governments should work together to ensure participation, transparency, and accountability in vaccine research, development, and manufacturing.

*(above) A municipal worker in Karachi, Pakistan checks the body temperature of a man waiting at a food distribution point during a government-imposed Covid-19 lockdown in April 2020.*

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AFP via Getty Images

*(front cover) A woman hugs her 85-year-old mother through a transparent plastic curtain at a nursing home for older people in São Paulo, Brazil in June 2020.*

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