

Reference: TG AMR 20/2021.1865

The Right Honourable Justin Trudeau, P.C., M.P.
Prime Minister of Canada
80 Wellington Street
Ottawa, ON K1A 0A2
Canada

28 July 2021

Dear Prime Minister Trudeau,

RE: CANADA'S HUMAN RIGHTS OBLIGATIONS ON GLOBAL ACCESS TO COVID-19 VACCINES

We write on behalf of Amnesty International regarding Canada's human rights obligations vis-à-vis the urgent need to ensure fair global access to vaccines. We are particularly concerned that Canada's neutral position on a temporary waiver to the **World Trade Organization (WTO)'s Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS)** and its failure to reform the **Canadian Access to Medicines Regime (CAMR)** so manufacturers can expand the global supply of Covid-19 vaccines, constitute a failure to fulfil its international human rights obligations.

CANADA AND GLOBAL ACCESS TO COVID-19 VACCINES

Canada's commitment to contribute \$1.3 million to the World Health Organization's Access to Covid-19 Tools Accelerator (ACT-A) and to its COVAX Facility, dedicated to increasing global access to Covid-19 vaccines especially to lower and middle-income countries, is a welcome step. However, financial support alone cannot protect the right to health of millions around the world. Since its first delivery in February 2021, COVAX is already unable to deliver according to schedule in many countries and; in fact, on June 26, COVAX announced that it had no doses of AstraZeneca, Serum Institute of India, and Johnson & Johnson vaccines in stock. This severe global shortage is occurring while thousands of vaccine doses are expiring in Canada.

Dose-redistribution from high-income countries such as Canada, which has purchased enough doses to vaccinate its population five times over, is far from enough and the delivery timeline remains unclear. The only way to decrease the global inequality around access to Covid-19 vaccines is by increasing the supply through expanded manufacturing. Several efforts to do so are underway, but these have been hampered by the refusal of pharmaceutical companies, research institutions, funding agencies, and others to share knowledge and technology, as well as by the failure of states to create the necessary conditions for the scaling up of the global manufacturing of Covid-19 vaccines. These failures, combined with a lack of international cooperation, have compounded profound inequalities which are placing millions of lives at risk.

CANADA'S INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

Canada has signed and ratified every international treaty relevant to the highest attainable standard of physical and mental health (right to health), as enshrined in several international human rights instruments, including the International Covenant on Economic, Social and Cultural Rights (ICESCR). Likewise, Article 15 of the ICESCR establishes the right to enjoy the benefits of scientific progress and its applications (right to science).¹ Regarding implementation of these rights, the ICESCR clearly states that governments must "take steps, individually and through international assistance and

¹ Committee on Economic Social and Cultural Rights, General Comment 25 on Science and ESCR (article 15 (1) (b), (2), (3) and (4) of the ICESCR, E/C.12/GC/25, 30 April 2020, para 45

cooperation, especially economic and technical, to the maximum of its available resources with a view to achieving progressively the full realization” of these rights.²

In providing authoritative interpretation of the ICESCR, the Committee on Economic, Social and Cultural Rights (CESCR) has made it clear that the obligation of states includes the prevention, treatment and control of epidemics and other diseases, by making relevant technologies available and implementing and/or enhancing relevant immunization programmes and other strategies.³ Moreover, these measures are “obligations of comparable priority” to core obligations of the right to health so states cannot justify non-compliance.⁴ In sum, access to vaccines fall squarely within states parties’ comparable core obligations as these play an essential role in curbing communicable diseases.

Within the context of Covid-19, the CESCR specifically highlighted that “pandemics are a crucial example of the need for scientific international cooperation to face transnational threats”⁵ and that all people should have equal access to the applications of scientific progress, without discrimination.⁶ Just as importantly, the CESCR has reiterated that states must uphold extraterritorial obligations to support other states so that they can fulfil their human rights duties. This may be through proactive measures to assist other states in upholding the right to health, as well as refraining from obstructing any efforts that other governments may take to do so. In other words, all governments must cooperate to ensure access to Covid-19 vaccines around the world, which includes making any necessary adjustments to intellectual property laws, policies and practices to ensure that these do not form a barrier to Covid-19 health products for all people globally.

SUPPORT THE WTO WAIVER AND AMEND CANADA’S ACCESS TO MEDICINES REGIME (CAMR)

Amnesty International welcomes Canada’s engagement in the discussion of the temporary waiver to the WTO’s TRIPS Agreement. However, we continue to urge your government to fully and publicly support this initiative and we are concerned by Canada’s ongoing position that the flexibilities in the current TRIPS agreement are sufficient to respond to the global Covid-19 vaccine crisis through the current compulsory licensing system. This position squarely contradicts Canada’s failure to cooperate with recent attempts to use compulsory licenses to expand access to Covid-19 vaccines, namely attempts made by the Canadian pharmaceutical company Biolyse to produce a biosimilar version of the Johnson & Johnson vaccine, under a compulsory license pursuant to the WTO TRIPS Agreement Article 31bis, which allows exporting health products to countries that do not have manufacturing capacity to make these domestically.

Clearly, Canada is not opposed to compulsory licensing or adjusting intellectual property rights for its own domestic use. When the pandemic first hit in March 2020, as part of the Covid-19 Emergency Response Act, Canada amended its Patent Act as follows: Article 19.4 (1): “The Commissioner shall, on the application of the Minister of Health, authorize the Government of Canada and any person specified in the application to make, construct, use and sell a patented invention to the extent necessary to respond to the public health emergency described in the application.” Canada’s swift action to ensure intellectual property rights would not obstruct the right to health at the national level is commendable, however it remains unclear why Canada will not fully support the temporary TRIPS waiver or the request from Biolyse, which would overcome similar barriers at the international level.

Within this context, Amnesty International is concerned about Canada’s failure to adjust its national legislation to address the global unequal access to Covid-19 vaccines. Since March 2021, the Canadian pharmaceutical company Biolyse has unsuccessfully attempted to obtain a compulsory license under the Canada Access to Medicines Regime (CAMR), as per WTO regulations. If granted, Biolyse could produce up to 20 million doses per year, supplying Bolivia with the first 15 million to inoculate the country’s entire adult population. However, we understand that Covid-19 vaccines have not been included in Canada’s Patent Act’s Schedule 1, which lists products eligible for compulsory license under the CAMR. As a result, Biolyse has been unable to move forward. Meanwhile, Bolivia faces a death toll from the virus that is nearly double of Canada’s (1,500 versus 700 per million people) and only 6% of the Bolivian population is fully vaccinated, while Canada has fully immunized 55% of its people. This inequality is reflected across the globe as 85% of vaccine doses have been bought by high- and upper-middle-income countries, while only 0.3% of doses have been administered in low-income countries.

2 ICESCR, Article 2.1

3 CESCR, GC 14, article 12.2(c), paras 16, 44

4 CESCR, GC 14, paras 43, 44, 47. Paragraph 47 states that the “core obligations” in paragraph 43 are non-derogable.

5 CESCR, “Statement on the Coronavirus Disease (Covid-19) Pandemic and ESCR”, E/C.12/2020/1, 17 April 2020

6 CESCR, GC 25, para 17

As you know, a product can be added to Schedule 1 if it “may be used to address public health problems afflicting many developing and least developed countries, especially those resulting from HIV/AIDS, tuberculosis, malaria and other epidemics”. Given the scale of the Covid-19 pandemic and how quickly and early on Canada amended its domestic legislation to allow for Covid-19 health products to be manufactured for domestic use, it remains unclear why Canada has yet to amend Schedule 1 to include Covid-19 health products for export. Failure to add Covid-19 to Schedule 1 of the Patent Act, allowing the scale-up of manufacturing capacity of relevant health products in Canada, contradicts Canada’s international human rights obligations.

RECOMMENDATIONS

In sum, Amnesty International urges Canada to fully implement its international human rights obligations, in line with the following immediate recommendations, to ensure that Covid-19 vaccines are available, accessible, and affordable to the maximum number of people around the world:

- Amend Schedule 1 of the Patent Act immediately, based on the recommendation of the Minister of Health and the Minister of Industry, with the support of the Prime Minister;
- Strongly and publicly support the temporary waiver to the WTO TRIPS Agreement, as a means of supporting initiatives that increase global access to Covid-19 health products;
- Ensure that Johnson & Johnson fully cooperates with the licensing process by sharing knowledge and technology so that the production of these vaccines can be expedited as quickly as possible.
- Support knowledge and technology sharing mechanisms, such as the Covid-19 Technology Access Pool (C-TAP) and mRNA transfer hub, promoting open and non-exclusive licences that include technology transfer.

A just recovery from the pandemic can only begin for all people with universal and fair access to Covid-19 vaccines. Amnesty International calls on you to ensure that Canada implements human rights solutions to end Covid-19 for all people, no matter where they live. Thank you for your urgent attention to these recommendations and we look forward to receiving your response to this letter, which will become public on Amnesty International’s website shortly.

Yours sincerely,

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CC:

The Honourable François-Philippe Champagne, P.C., M.P., Minister of Innovation, Science and Industry C.D.
The Honourable Patty Hajdu, P.C., M.P., Minister of Health
The Honourable Marc Garneau, P.C., C.C., C.D, M.P., Minister of Foreign Affairs
The Honourable Karina Gould, P.C., M.P., Minister of International Development