

28 September 2023

Fatima Hassan – Health Justice Initiative (HJI), South Africa #

1. Thank you, Chairperson. My name is Fatima Hassan, and I am the Director of the [Health Justice Initiative](#) (HJI) in Cape Town, South Africa.
2. The HJI is an NGO dedicated to advocating for racial and gender equity for **timely and affordable** access to all medical goods, including vaccines, diagnostics, and therapeutics.
3. HJI was established to prevent a **repetition in this pandemic** of the horror of the HIV and AIDS pandemic, where millions of mainly poor people died, prematurely, in my country, in Africa, and around the world – because even then, we were denied timely and affordable access to the best science had to offer.
4. At that time, we acted by **using legal and other actions, to force the market** and drug companies, and even the SA government, to address IP monopolies and excessive pricing, to let affordable generic versions enter the market.
5. That **did not happen automatically** nor speedily. And it definitely did not happen through voluntary market conduct alone. In this pandemic, we have had to resort to legal action too to ironically compel contractual transparency- which I will discuss shortly.
6. Today, I want to share **my experience at the forefront of low and middle-income** countries' struggles to access lifesaving technologies, because it has a direct impact on our ability to access timely and affordable supplies of current and future COVID treatments and diagnostics.
7. First, the world has witnessed and lived through **vaccine nationalism** in the past 3 years. The hoarding of life saving vaccine supplies has also been accompanied by the hoarding of knowledge.
8. Second, I live in a country reeling from an apartheid based two-tier, **unequal health system** - which has implications for so called 'voluntary' licensing models and approaches, because they further segment our health sector and also "divide" countries such as mine along 'market rules', not "health need".

9. Third, I live in one of the most **unequal countries in the world**. Yet, if not ironically, SA is regarded at times as ‘middle income’. Because of that classification, often, we are excluded from voluntary licensing deals for our entire health sector and cannot benefit from early generic entries on a range of life saving vaccines and medicines, among others, despite existing manufacturing capacity in country and the region.
10. You see, at the beginning of this pandemic, we **were promised solidarity** by world leaders and others. I am sorry to say to you that when it mattered the most, we were not the beneficiaries of that solidarity – and still, we are not.
11. What we experienced in our region of Africa was **vaccine nationalism, and pernicious bullying** by manufacturers and suppliers in a “take it or leave it” situation.
12. **And we have been here before:** we have a history of denial of timely access to life saving medicines when it matters the most: from HIV, to cancer, to TB and more recently COVID – so much so that even the SA President – recently, in Paris - likened our terrible experience with searching for vaccine supplies to being a ‘beggar’ in this pandemic.
13. **And the reason we turned into beggars is simple: The market was left on its own and** mostly unregulated, it used its power to distort equity norms and aims, all while benefiting from public funding and the trial participation of our people, and it failed us - coupled with no restrictions on excessive IP protection during a global health emergency; absence of a timely, and time bound IP waiver – we were left instead with concentrated manufacturing, refusal of broad knowledge sharing, limited generic entrants, demands of contractual secrecy with minimal transparency for not just pricing and its variations, but secrecy in all material elements of pandemic contracting. Companies even demanded a trade of national sovereignty for scarce supplies! We should not have a repeat of this for therapeutics and diagnostics.
14. For us, richer countries too, acted in stark contrast to their “words” of solidarity – they delayed negotiations on the waiver proposal, prioritised themselves in contracting negotiations and over ordered. And then refused to broaden the manufacturing base to ensure sustainable supply chains when it mattered the most.
15. So, all of the promises and pledges of solidarity and support for marginalised and poor people living in the Global South did not materialise, both from pharmaceutical companies -and COVAX too.
16. While the World Trade Organisation (WTO) discussed the waiver proposal of October 2020 and negotiated for a very long time, ultimately a very narrow, time bound “deal” on vaccines –

unfortunately, the global system of world trade rules delayed not just that very decision on vaccines, costing us time and lives, but also, to date, has not found itself to decide on two other key and essential public health tools to manage COVID: diagnostics and therapeutics.

17. The WHO estimates at least 14 million direct and indirect deaths of people globally, in the space of 2 years from COVID – but still, right now, the tests and treatments to track and manage COVID infections are out of reach for many of us in the Global South.
18. There is also a pipeline of treatments that are going to be available for COVID which again, we are unlikely to benefit from in a timely and affordable manner, like with vaccines. Similarly, we cannot even access affordable and widespread self-testing kits and consumables.
19. In 2020 and 2021 especially, HJI tracked vaccine supplies and licensing arrangements for SA.
20. What we witnessed in the pandemic was a lack of solidarity and prioritisation even with market driven “voluntary licensing arrangements”, accompanied by, I must emphasise, high levels of secrecy and minimal transparency.
21. For the better part of 2021, we were drip fed supplies, affecting our country’s entire vaccination programme. All the while, the WTO delayed negotiations and it has over time, risked becoming unhelpful and increasingly irrelevant for people in the Global South.
22. For about 2 years, as an NGO, we challenged the secrecy that companies and even GAVI, for COVAX, demanded of the SA government -where substantial public funds and resources were used for the procurement of COVID vaccines.
23. On 17 August 2023, a few weeks ago, the HJI won an important and precedent setting case that resulted in a Court in SA ordering the public [disclosure of all vaccine procurement contracts for SA](#) - in an unredacted form. When we initiated the case, we were told that even the contracting parties’ details for legal service, were a secret!
24. The unredacted contracts, four, a global first via a court mandated process, are available on HJI’s website - including a multi-stakeholder academic and CSO analysis – it shows one sided terms and conditions even from COVAX, and worrying bullying behaviour from certain pharmaceutical companies, as well as onerous terms and conditions.
25. Since the disclosure, government officials in SA have admitted that they were ‘bullied’ in unprecedented ways in a set of “take it or leave it” negotiations.
26. The now opened contracts tell a disturbing story and prove that the market, with its voluntary deals and bi-lateral agreements extracted secrecy at the cost of our sovereignty in the Global South. I urge you all to read the unredacted contracts and our detailed analysis. Because these

one-sided contracts at the very least, reveal the pernicious nature of bullying that took place IN A PANDEMIC and health emergency!

- a. The terms and conditions are extremely onerous and make it difficult to plan effective public health mitigation responses, because TIMING of supply delivery is critical, but it was not guaranteed. It also begs the question- why the secrecy?
- b. The contracts also reveal worrying trends in relation to so called "market deciders and shapers". It shows that the SA government was forced to trade secrecy for scarce supplies when our country was desperate for access; manufacturing was concentrated, knowledge was not widely shared, full indemnification was demanded; unfettered priority exports were insisted upon; confidentiality and NDAs were required; pricing was varied and in certain instances was excessive compared to what even Northern countries were charged; price and volume certainty were not guaranteed, among others. These demands and supplies costs us in the region of 11- 14 bill SA rands (ex. rate of 20:1 for US \$: ZAR) of public money, including onerous advance payment clauses.
- c. Worse, the opened contracts show that SA was precluded by a pharmaceutical company from placing any export limits on vaccines filled and finished in SOUTH AFRICA. That clause – now open for all to read- effectively enabled 30 million vaccine doses to leave the shores of the Eastern Cape in SA for European customers in 2021, while people in my country – people with co-morbidities, the elderly - waited and waited for supplies and faced devastating waves of infection.

27. In this pandemic– we heard the slogan of "never again" yet what we experienced was vaccine apartheid and bullying and secrecy, where supplies of vaccines also tested and trialled on our people were prioritised first for richer nations and then drip fed to us - delaying our vaccination programme, affecting overall vaccination pace, uptake, and confidence too, affecting what is commonly called the "last mile" for delivery and administration.

28. This situation is repeating itself: Right now, we cannot broadly access COVID therapeutics, Paxlovid, for example, because decisions regarding access and price are left to a handful of corporate executives and manufacturing is highly concentrated:

- a. Private sector access in SA to a single course Paxlovid regimen is approximately ZAR 14 000 (US \$ 728)– making it unaffordable for most South Africans.
- b. The public sector cannot afford the price offered to the SA health department and no generic versions have been submitted for registration / use as yet.

29. Imperfect and access limiting 'voluntary' agreements were brokered at the height of political and public pressure on companies to ensure access. There is zero reason to believe that they will on their own speedily ensure access to the next generation of COVID treatments.

- a. And there are MORE treatments in the development pipeline for COVID-19, [dozens of which](#) are in late-stage clinical trials.
- b. Many of these could even be more effective than Paxlovid. But we fear, once again, we will be at the back of the line, our African lives not considered important enough to benefit from breakthrough science.

30. That is the crux of the issue here: the drugs and treatments in the pipeline. Without easing limits to enable wider production and export of generic versions and easier access to testing kits/consumables, we cannot manage to contain COVID, treat it, or even diagnose it in an optimal manner. The time to act is passing the WTO by, rapidly. The WTO does not have to be deferential to the market alone. Please use this opportunity to make a late, but much needed difference.

To conclude: The market has let us down before, it really should not again. It will not give us equity, broad and timely access, or affordability, if it acts alone. We therefore urge member states to make a final decision, now, on extending para 8 for therapeutics and diagnostics. Further delays will just risk making the WTO increasingly irrelevant.

ENDS