



Treatment Action Group

Submission to OHCHR

Date: 31. January 2023

**Regarding: Call for inputs: Promoting and protecting economic, social and cultural rights within the context of addressing inequalities in the recovery from the COVID-19 pandemic**

Introduction:

1. Treatment Action Group (TAG) is an independent, activist, and community-based research and policy think tank committed to racial, gender, and LGBTQ+ equity; social justice; and liberation, fighting to end HIV, tuberculosis (TB), and hepatitis C virus (HCV). We are science-based activists working to expand and accelerate vital research and effective community engagement to end the HIV, TB, and HCV pandemics.
2. TAG strongly urges OHCHR to **explicitly recognize and further resource the application of the right of everyone to enjoy the benefits of scientific progress and its applications** (hereafter: right to science) as establishing essential obligations on states to ensure equitable, affordable, timely and universal access to scientific progress in the recovery from the COVID-19 pandemic.
3. The right to science is a necessary complement to attaining the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (hereafter: right to health) in the context of pandemics. The right to science obligates states to develop, diffuse, and conserve science. States must acknowledge and act on this tripartite set of obligations—develop, diffuse, and conserve—to realize an equitable recovery from COVID-19, one that addresses inequalities arising from and exacerbated by the current pandemic and prevents future pandemics.
4. A right to science analysis is relevant to all areas of a COVID-19 pandemic recovery. This includes the noted chronic underinvestment in public health, research and development, social protection, housing, education, water and sanitation, food and all other areas in which science and technology have the ability to promote, or – through their inaccessibility – hinder equitable human advancement.

Financing Research and Development with Respect for the Right to Science and other Economic, Social, and Cultural Rights

5. The right to science derives from the International Covenant on Economic, Social, and Cultural Rights Art. 15 (1) (b), (2), (3) and (4). Access sits at the heart of the right to science: In a May 2012 report to the Human Rights Council, former Special Rapporteur in the field of cultural rights Farida Shaheed listed access as the first element of the normative content of the right: “The right to science connotes, first of all, a right of access: scientific knowledge, information and advances must be made accessible to all . . . without discrimination of any kind.”<sup>1</sup>
6. Importantly for the context of COVID-19 and the right to health, ‘access’ under the right to science includes:
  - a. the intangible scientific benefits of science, i.e., knowledge, information;

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<sup>1</sup> A/HRC/20/26, para. 26.

# TAG

## Treatment Action Group

- b. the tangible, material results of scientific progress, i.e., medicines, vaccines;
  - c. and the means, methods, and materials of scientific discovery.
7. In addition, the right to science articulates state obligations for the *purposive development* of science and technology for public benefit in ways that ensure the availability, accessibility, affordability, and quality of scientific goods, e.g., vaccines, treatments, and diagnostics. This 3AQ standard mirrors how the right to health defines access as multi-dimensional.<sup>2</sup>
  8. The purposive development of science for public benefit requires that states invest in the research and development of “innovations essential for a life with dignity.”<sup>3</sup> Stated simply, this requires that states direct adequate resources to supporting science for public benefit to make available the scientific tools and applications needed to realize other economic, social, and cultural rights. To honor the principle of non-discrimination, state investments in science should be directed toward meeting the innovation needs of vulnerable and marginalized groups. At the outset of the COVID-19 pandemic, many tools essential for realizing the rights to health and life were not available because they had not yet been created through research and, when they became available through research, remained out of reach of those who needed them most.
  9. In 2020, coinciding with the start of the COVID-19 pandemic, CESCR published General Comment 25 on science and economic, social, and cultural rights (hereafter: GC25) providing the first authoritative analysis of the right to science.<sup>4</sup> GC25 also analyzes the interrelation of the right to science and the right to health. GC25 reiterates the right to health definition of access as being comprised of availability, accessibility, acceptability, and quality (3AQ). With regards to availability, GC25 notes “States parties should direct their own resources and coordinate actions of others to ensure that scientific progress happens and that its applications and benefits are distributed and are available, especially to vulnerable and marginalized groups.”<sup>5</sup> As a part of accessibility, GC25 stresses that “States parties should ensure that everyone has equal access to the applications of science, particularly when they are instrumental for the enjoyment of other economic, social and cultural rights.”<sup>6</sup>
  10. Beyond committing adequate resources to science itself, states must deploy their financial support in ways that promote equitable access to the benefits of science. Taking the global response to the TB epidemic as an example, TAG has shown how the right to science framework allows states to make the connections between support for research, i.e., science itself, and commitments to access, i.e., how the benefits of science are distributed. State support for science (development), equitable distribution of its benefits (diffusion), and efforts to ensure these benefits are lasting (conservation) are all necessary to satisfy the conditions for access.<sup>7</sup>
  11. A guiding principle should be that the fruits of publicly funded innovation should be available to the public without barriers e.g., scarcity, unaffordability, or restricted eligibility. One of the most common barriers to equitable access and public benefit arises from maximalist approaches to

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<sup>2</sup> E/C.12/2000/4.

<sup>3</sup> A/HRC/20/26, para. 29.

<sup>4</sup> E/C.12/GC/25.

<sup>5</sup> E/C.12/GC/25 para. 16.

<sup>6</sup> E/C.12/GC/25 para. 17.

<sup>7</sup> Frick, M., & Dang, G. (2021). The Right to Science: A Practical Tool for Advancing Global Health Equity and Promoting the Human Rights of People with Tuberculosis. In H. Porsdam & S. Porsdam Mann (Eds.), *The Right to Science: Then and Now* (pp. 246-267). Cambridge: Cambridge University Press. doi:10.1017/9781108776301.016



## Treatment Action Group

intellectual property that protect monopolies on life-saving health technologies over public health. The development of COVID-19 vaccines stands out as stark example of the consequences of states funding research without safeguarding access to its resulting benefits and applications.

12. On this point, TAG encourages OHCHR to revisit the recommendations of the final report of the UN Secretary-General’s High-Level Panel on Access to Medicines, which examined access to innovation and health technologies in the context of international trade.<sup>8</sup> Expedient implementation of the High-Level Panel’s recommendations could have avoided many of the challenges of COVID-19 vaccine inequity and will help States prepare for and respond to future pandemics in ways that generate more equitable outcomes.
13. Under the theme of *Publicly-funded research*, the Report of the High-Level Panel on Access to Medicines recommends that “**Public funders of research must require that knowledge generated from such research be made freely and widely available;**” and that “**Universities and research institutions that receive public funding must prioritize public health objectives over financial returns in their patenting and licensing practices.**”
14. Under the theme of *New incentives for research and development of health technologies*, the Report of the High-Level Panel on Access to Medicines calls on governments to “**form a working group to begin negotiating a Code of Principles for Biomedical R&D. These principles would apply to public R&D funds and should also be adopted by private and philanthropic funders.**” The need for such a Code of Principles has never been more urgent: The inequitable distribution of COVID-19 vaccines makes clear that public financing agreements for research on existing pandemics (COVID-19), endemic health threats (HIV, TB, HCV), and future pandemics (Pathogen X) must include strong access conditionalities and safeguards.

### Creating Budget Space for the Realization of the Right to Science and Other Economic, Social, and Cultural Rights

15. GC25 makes specific mention of global health emergencies, requiring that “If 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.”<sup>9</sup> It also points to extraterritorial obligations of states to realize the right to science.<sup>10</sup>
16. Such extraterritorial obligations can include direct financial support to states with lesser resources but can also be realized through other means. For example, transferring technology to enable local manufacturing of essential health products or licensing the technology, knowledge, and know-how underlying such products to patent pools, thereby enabling scientists and/or manufacturers to access the means, methods, and materials of scientific discovery regardless of their nationality. Many concrete mechanisms already exist to enable States to share knowledge across borders.
  - a. Early in the pandemic, the World Health Organization (WHO) and the Government of Costa Rica launched the COVID-19 Technology Access Pool (C-TAP) to facilitate the

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<sup>8</sup> Report of the United Nations Secretary-General’s High-Level Panel on Access to Medicines. Promoting innovation and access to health technologies (2016) <<http://www.unsgaccessmeds.org/final-report>> (accessed 3 October 2022)

<sup>9</sup> E/C.12/GC/25 para. 82.

<sup>10</sup> E/C.12/GC/25 para. 83.



## Treatment Action Group

- expedient and equitable sharing of tangible and intangible outputs of COVID-19 science. C-TAP “provides a single global platform for the developers of COVID-19 therapeutics, diagnostics, vaccines and other health products to share their intellectual property, knowledge, and data with quality-assured manufacturers through public health-driven, transparent, voluntary, non-exclusive and transparent licenses.”<sup>11</sup>
- b. Partly because States did not embrace C-TAP to license and share publicly funded technologies to a meaningful extent, the WHO later established the mRNA vaccine technology transfer hub to democratize the know-how and technology behind mRNA vaccines. The mRNA hub has the potential to broaden access to vaccines based on mRNA, not only existing COVID-19 vaccines but also future vaccines against a range of diseases from TB to HIV to flu.
17. The extraterritorial obligations of states to protect and fulfill the right to science in times of pandemic response and recovery may also entail maximizing resources available to other states through e.g., forgiving sovereign debt in order to free greater budgetary space for investments in health and science. UNAIDS has warned of the “pandemic triad” of HIV, COVID-19, and debt in developing countries. In 2020, of every \$10 in government revenue, \$4 was allocated to servicing debt compared to \$1 invested in health. Debt levels rose in most developing countries during the pandemic. As UNAIDS writes, “payments on these debts have shifted resources away from guaranteeing the full enjoyment of economic, social, and cultural rights.”<sup>12</sup> In essence, servicing debt deprives states of the fiscal space required to mobilize “maximum available resources” for science, health, and other economic, social, and cultural rights. States that act as creditors and hold debt should see debt relief—including debt swaps for investments in science and health, or outright debt cancellation—as acting on their extraterritorial obligations to realize the right to science and other human rights.
18. Other financial tools include protecting resources available to states through progressive taxation policies or by curbing illicit financial flows. The Special Rapporteur on foreign debt, other international financial obligations and human rights has proposed reforming the global fiscal architecture using a human rights lens.<sup>13</sup> This would include curbing illicit financial flows or closing tax loopholes which, as HRC has recognized, “deprive countries of resources required to progressively realize economic, social, and cultural rights.”<sup>14</sup> Solving these challenges will require countries to cooperate and work together

## Recommendations

19. Despite the interrelation of science, health, and other economic, social, and cultural rights, the right to science is rarely invoked and remains largely unknown even among UN bodies. **It is thus imperative that OHCHR, through its oral and written reports to the HRC, explicitly acknowledges the human rights dimensions of science, includes a right to science analysis**

<sup>11</sup> WHO COVID-19 Technology Access Pool <https://www.who.int/initiatives/covid-19-technology-access-pool> (accessed 30 January 2023)

<sup>12</sup> UNAIDS, ‘UNAIDS warns that HIV, COVID and other health investments are in danger due to a looming debt crisis in Africa and the developing world’ (13 October 2022) [https://www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2022/october/20221013\\_pandemic-triad](https://www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2022/october/20221013_pandemic-triad) (accessed 30 January 2023)

<sup>13</sup> A/77/169

<sup>14</sup> A/HRC/RES/46/11



**Treatment Action Group**

**into the discussion of COVID-19 recovery, and reaffirms the right of everyone to participate in and enjoy the benefits of scientific progress and its applications.**

20. **TAG further recommends that OHCHR, together with CESCR and the special procedures of the HRC, consider instituting a dedicated position and/or working group with a mandate to elucidate the interrelatedness and interdependence between the right to science and other economic, social, and cultural rights—starting with the right to health.** The implications of scientific discovery for equitable global health outcomes are not limited to COVID-19 and will only continue to grow as new disease threats emerge. States are already confronting this reality in recent outbreaks of monkeypox and Ebola and failures to ensure equitable access to vaccines and therapeutics across endemic and formerly non-endemic countries.
21. The COVID-19 pandemic has shown, again, that if governments invoke human rights standards as rhetorical aspirations, rather than approach human rights as concrete legal entitlements, states will not be able to manage epidemics within their own borders. **Policymakers must use a right to science-based framework, coupled with the obligations under the right to health (including addressing underlying determinants of health such as socio-economic conditions that influence health outcomes), to ensure equitable access to the results of scientific advances.** This includes all advances that could positively impact all social determinants of health, but that are priced out of reach or not physically available for those who need them
22. COVID-19 has shown that policy makers and governments have not sufficiently taken to heart the lessons learned from the HIV and TB epidemics, i.e., that human rights of all affected communities must be at the center of any public health or policy response. **Community participation in COVID-19 research and response has been extremely limited. States have neglected one of the strongest forces for dissemination of adequate information, building trust in health tools such as vaccines, and vaccine delivery, thereby undermining the right to participation, referenced as indispensable by both the right to science and right to health. OHCHR must recommend inclusion of affected communities within the COVID-19 recovery process.**
23. In conclusion, as this workshop discusses ways to promote and protect economic, social, and cultural rights within the context of addressing inequalities in the recovery from the COVID-19 pandemic, **TAG encourages all participants to familiarize themselves with the right to science and draw on the right to science in its analysis of a human rights-based pandemic recovery.**