Submission to OHCHR: Input to HRC Resolution 49/25

ATTN: Registry of OHCHR

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 in its report following HRC resolution 49/25 to recognize **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 vaccines in response to 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. Ensuring universal access to vaccines requires that states acknowledge and act on this tripartite set of obligations. A right to science analysis is relevant to both areas where OHCHR is seeking input, as detailed below.

(a) the human rights implications and the impact on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health of affordable, timely, equitable and universal access and distribution of COVID-19 vaccines:

1. 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.”[[1]](#footnote-1)
2. Importantly for the context of COVID-19 vaccines and the right to health, ‘access’ under the right to science includes:
   1. the intangible scientific benefits of science, i.e., knowledge, information;
   2. the tangible, material results of scientific progress, i.e., medicines, vaccines;
   3. and the means, methods, and materials of scientific discovery.
3. 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. This 3AQ standard mirrors how the right to health defines access as multi-dimensional.[[2]](#footnote-2)
4. 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.[[3]](#footnote-3) GC25 also analyzes the interrelation of the right to science and the right to health.
5. 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.”[[4]](#footnote-4) 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.”[[5]](#footnote-5)
6. Vaccines are one application of science instrumental for the enjoyment of the right to health. In this sense, vaccines as a specific application of science qualify as what Farida Shaheed termed “innovations essential for a life with dignity.” Therefore, vaccines against COVID-19 “should be accessible to everyone, in particular marginalized populations.”[[6]](#footnote-6) Analyses of the human rights implications and impacts of COVID-19 vaccine distribution are stronger for recognizing duties the right to science places on states alongside obligations originating in the right to health.
7. 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.”[[7]](#footnote-7) It also points to extraterritorial obligations of states to realize the right to science.[[8]](#footnote-8)
8. TAG has shown how the global TB epidemic stands as an exemplar of 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. Thus, “a state that satisfies its obligation to develop science without supporting diffusion and conservation has not created the conditions necessary for access.”[[9]](#footnote-9) This lesson, drawn from analysing the right to science in the context of TB, is also evident from the experience of COVID-19 vaccines.
9. In short, TAG’s analysis indicates that without recognizing the right to science and acting on the tripartite obligation to develop, diffuse, and conserve its benefits, states will not be able to realize the right to health, especially with regards to universal access to COVID-19 vaccines.
10. Despite the interrelation of science and health, the right to science and its interdependence with the right to health 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 acknowledge the human rights dimensions of science and reaffirm the right of everyone to participate in and enjoy the benefits of scientific progress and its applications.
11. 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 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 the current outbreak of monkeypox and failures to ensure equitable access to vaccines and therapeutics across endemic and formerly non-endemic countries.

(b) good practices and key challenges in ensuring affordable, timely, equitable and universal access and distribution of COVID-19 vaccines:

1. In analyzing good practices and key challenges regarding COVID-19 vaccine distribution, TAG urges OHCHR to advise states to keep in sight the considerable body of recommendations generated from the experiences of responding to ongoing pandemics such as TB and HIV.
2. 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 entitlement, 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 vaccine equity.
3. A right to science analysis frames access to COVID-19 vaccines in terms of human rights standards such as transparency, participation, access, non-discrimination, and international cooperation.
4. For example, the right to science requires transparency in any pandemic response by articulating a right of affected communities to participate at all levels of science, from the design of clinical trials to the creation of evidence-based health policies. Importantly, GC25 does not endorse a rigid distinction between scientists and the general public. This stance validates the rich tradition of community engagement in global health research and policy formulation. Successful examples include community advisory boards for TB and HIV clinical trials, whose responsibility goes beyond finding study participants to bringing community expertise into the design, direction, and dissemination of trials and their results. Through their participation in HIV and TB research, communities are recognized as innovators for providing access to scientific benefits and knowledge, especially to marginalized populations.[[10]](#footnote-10)
5. 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 heath.
6. Community-led research has documented that vaccine availability and the ability to access vaccines physically and economically are the main barriers for communities—not vaccine hesitancy. Early and consistent involvement of community-based organizations representing e.g., people affected by TB, people living with HIV, LGBTQIA, people with disabilities, and rural communities could have – and still can – identify and address access barriers for COVID-19 vaccines.[[11]](#footnote-11)
7. However, for community participation to translate into vaccine access where it would otherwise not exist, vaccines must first be made available. Patent-protected monopolies on COVID-19 vaccine knowledge and know-how have resulted in deadly disparities in access across countries. The right to science confronts the tension between intellectual property (IP) rights and the right to share in the benefits of scientific advancement by reaffirming the primacy of human rights over IP protections.[[12]](#footnote-12)
8. Exercise of IP during pandemics should not undermine the realization of human rights by privatizing public goods. 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 the right to health and access to innovation and health technologies in the context of international trade.[[13]](#footnote-13) Expedient implementation of the Report’s recommendations could have avoided many of the challenges of COVID-19 vaccine inequity. TAG points to the following recommendations as particularly relevant to HRC resolution 49/25:
9. Under the theme of *Publicly-funded research*, the Report recommended 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.”
10. Under the theme of *New incentives for research and development of health technologies,* the Report called 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 COVID-19, HIV, TB and other health conditions must include strong access conditionalities and safeguards.
11. In conclusion, as the High Commissioner for Human Rights prepares a report under HRC resolution 49/25, TAG encourages OHCHR to draw on the right to science in its analysis of the human rights implications of affordable, timely, equitable and universal access to and distribution of quality, safe, efficacious and affordable COVID-19 vaccines.

1. A/HRC/20/26, para. 26. [↑](#footnote-ref-1)
2. E/C.12/2000/4. [↑](#footnote-ref-2)
3. E/C.12/GC/25. [↑](#footnote-ref-3)
4. E/C.12/GC/25 para. 16. [↑](#footnote-ref-4)
5. E/C.12/GC/25 para. 17. [↑](#footnote-ref-5)
6. A/HRC/20/26, para. 29. [↑](#footnote-ref-6)
7. E/C.12/GC/25 para. 82. [↑](#footnote-ref-7)
8. E/C.12/GC/25 para 83. [↑](#footnote-ref-8)
9. 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 [↑](#footnote-ref-9)
10. See, for example, Global TB Advisory Board, Treatment Action Group (2022). 10-Year Anniversary Evaluation Report 2011-2021. <https://www.treatmentactiongroup.org/publication/tb-cab-10-year-anniversary-evaluation-report-2011-2021-and-podcast/> <accessed 3 October 2022> [↑](#footnote-ref-10)
11. Matahari Global Solutions (2022). Mapping Access Gaps in COVID-19: Results from 14 Countries and Territories. <https://itpcglobal.org/blog/resource/mapping-covid-19-access-gaps-results-from-14-countries-and-territories/> <accessed 3 October 2022> [↑](#footnote-ref-11)
12. E/C.12/GC/25 paras. 58–62. [↑](#footnote-ref-12)
13. 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) [↑](#footnote-ref-13)