

# “CAPITALISM AND THE SYSTEM OF PATENT MONOPOLIES WERE THE BIGGEST CHALLENGE TO THE TRIPS WAIVER”

• Interview with Fatima Hassan •

By Sur Journal

*Fatima Hassan is a South-African human rights lawyer, founder of the Health Justice Initiative (HJI), and a persistent activist for social justice.<sup>1</sup> Hassan has an extensive track record of defending and promoting human rights in her country, especially in the area of access to HIV/AIDS treatment, on which she has written and published widely.*

*During the COVID-19 pandemic, her work was highlighted in the debate on the global response to the crisis, the lack of access to vaccines and the arduous struggle to break patents. In this interview for Sur, Fatima Hassan emphasises the need to highlight the systemic problem of inequality that the pandemic and the protectionism surrounding vaccines have exposed. Focusing on the TRIPS waiver discussion, she criticises the monopoly of vaccines by the richest countries, reflected in the unethical and scandalous vaccine coverage of only 7% of the African continent by the end of 2021, for example. In particular, Hassan questions the role of some governments, the pharmaceutical industry and the WTO in the current global health crisis and in maintaining a colonial health system. Finally, she draws attention to the challenges that this agenda presents for civil society, both in creating strategies such as global vaccine alliances and in raising awareness that the patent issue is a human rights issue, and that justice and equity are about fair and timely access to life-saving technologies.*

**Sur Journal** • Tell us about how the African continent has positioned itself in the fight for access to vaccines, considering a context of global inequality highlighted by the COVID-19 pandemic.

**Fatima Hassan** • That’s a hard question because I think that the role of African governments, and particularly the African Union, has been deliberately muted by mechanisms that were created and offered as a sort of solution to vaccine access or equity for the continent. It’s hard to talk about the continent’s role when there are so many different parts to it - the only mechanism that could actually bring them together was the AU. And the AU, in my view, took a lot of its cues from the South African government. It took a while for it to come out in support of the TRIPS waiver, which was first brought to the table by South Africa and India, now supported by 100 member states at the WTO.

Unfortunately, even though African leaders said that it would do whatever it would take within its power to try and access sufficient supplies of vaccines, it hasn’t because it has relied on COVAX and also a mechanism called the African Vaccine Acquisition Trust. This delivery mechanism was also an initiative started by the South African president, who was the AU chair at the time, with a number of businesspeople. So, that’s the context.

If we look at the role of African governments versus the role of African businesses versus the role of African civil society, they’ve each played a very different role to try and get access to vaccines. But whatever role we all may have played in trying to highlight the issues of vaccine nationalism or vaccine apartheid or to get timely supplies, the net result is that at the end of 2021, only about 7% of people in Africa had actually received the first dose of a vaccine.

The reality is that we were operating in a global context where the systemic reasons for Africa not being prioritized for access to even a first shot of vaccines is something that we have to look at. Aside from the 7%, only one in four healthcare workers in Africa were vaccinated as of the end of 2021 per the WHO. Remember that we had started the pandemic off with the WHO saying that all healthcare workers should be first in line, and then you start with people who are at highest risk, and so on.

Having said that, what Africa did negotiate was an attempt at coordination, with the support of the African CDC and the WHO, to do two things: one was to sign contracts and get deals. Even though we weren’t prioritized for supplies by the pharmaceutical companies, they did that when they realised COVAX would not be sufficient.

The controversy has been that the money was paid, the contracts were signed, but we were just not prioritized for timely supplies and delivery for most of 2021.

Obviously, there were some companies that refused to sell to any country in Africa up until The New York Times and a lot of us started making a noise – for example, Moderna.

And then, the second thing that Africa did was – which I think is actually quite interesting – to invest significantly in information sharing. Botswana, South Africa and other countries shared in terms of identifying variants and surveillance information with the global scientific community. Also, quite early on, because of the TRIPS waiver discussions, there was also an initiative to set up the first WHO mRNA hub in South Africa - the WHO had decided to ensure domestic capacity, hoping that companies would share technology.

The first hub was set up in South Africa and that wouldn't have happened without the support of other African governments, the African CDC and the WHO.

**Sur** • What were the main challenges to the proposal led by South Africa and India for a temporary patent waiver for COVID technologies such as vaccines and drugs to address health emergencies such as the current COVID-19 pandemic?

**FH** • I think that the main challenge has been this long-standing challenge to any attempt to try and deal with intellectual property (IP) rights in a pandemic, in a global health emergency. We saw the same response from the industry and wealthier governments to HIV/AIDS, when Brazil, South Africa and Thailand were trying to do the same with HIV/AIDS [medicines].

Nobody thought that the rich governments and the pharmaceutical industry would actually block the waiver proposal. Nobody thought this would happen because it's a simple, narrow, time-bound, elegant solution to dealing with the issues of IP and access in the middle of a pandemic, which crisis has been unprecedented.

Nobody even thought that a simple proposal like this would garner so much opposition and would create an existential crisis for the pharmaceutical industry.

So, I think the first challenge was that you had a set of very wealthy countries, particularly the US, the EU, Norway, Switzerland and the UK, saying from day one, "absolutely not. We're not going to support a waiver on any IP rights on any of the technologies" also because the industry had lobbied them to say so, in my view.

When the proposal was made, the first vaccine hadn't even been approved or authorized for use. We didn't know if we would have a vaccine. We didn't know what therapeutics we would get or what was potentially on the horizon.

But there was an explicit understanding that given our past and what happened with HIV/AIDS, if you don't address the IP issue, then it will become a barrier. I think everybody understood that unless something changed fundamentally in this pandemic, Latin America, Africa and Asia would be the last in line again for access. I can speak to the Africa situation - and that is exactly what happened.

Even prior to tabling the proposal in October 2020, the South African government submitted a document around July 2020 saying, “please, WTO, we are worried about the IP barriers. If you don’t address them, this is how it’s going to play out. It’s so restricted”. So, there was already a warning and detailed documentation of what was likely to happen. When the proposal was formally made in October 2020, the first vaccine had been authorized for non-clinical trial purposes, [and then,] in December 2020, they started administering it in the UK. The proposal had already been sitting there for two months and the key challenge was that these rich countries had said “absolutely no way” because of their investment, particularly the German government, the US and the British government. Because at one point, AstraZeneca was going to be the “people’s vaccine.” Obviously, that got derailed, but the British government had a vested interest in the AstraZeneca vaccine, like the US government did with Moderna, Pfizer/BioNTech and Johnson and Johnson, and the German government had the same with the Pfizer Bio-NTech vaccine.

A lot of those countries were saying “absolutely no way and not just with the vaccine. We don’t want to do this with therapeutics, diagnostics and ventilators, etc.” And so too the pharmaceutical industry.

I think the second challenge was the industry itself, its mode of operation (lobbying), power and its prioritization of profit over sharing the technology. The real fear on their behalf was that if you share the technology in this pandemic, then you open the door for other health conditions and the next pandemic. This is why even though they started off saying, “you don’t need a waiver. The waiver won’t make a difference”, they’ve put so much effort and resources *into opposing it and in fact blocking it – even though they are not elected representatives of anyone, nor constitute member states for the WTO.*

The third challenge has been the WTO itself. It’s become irrelevant. It is, in my view, a totally pointless institution because if it can’t help us in the middle of a pandemic, then what is the point. It’s been trying to get a resolution to the waive proposal but it has not been playing a very constructive role in this.

You had the US government coming out in May 2021 saying, “okay, we’ll support a partial waiver - on the patents only.” But nothing has moved. The EU came up with its third way proposal insisting that Compulsory Licences are the answer. France is now saying something different. Norway is saying something different... So, it’s a combination of these rich countries with the WTO machinery and the way it operates, and this whole idea of consensus, that you must have consensus on everything. A trade body deciding a health crisis in a pandemic – it is insane. And the very wealthy companies: Pfizer went to the US Congress to give evidence and they said, “we don’t support the TRIPS waiver”. So, this was not a proposal that they would just lightly regard. They were very consciously lobbying to make sure that different governments around the world did not support it – but 100 countries do now.

I think that if you ask what the biggest challenge to the TRIPS waiver proposal was, I would say “capitalism and the system of patent monopolies.”

**Sur** • Are there specific strategies that were more important or effective in pushing some countries to commit to this agenda?

**FH** • The strategy that worked for getting countries to do a U-turn – to get a country like, for example, Ireland recently, or Australia to do a bit of a backflip – is you’ve got to have strong civil society and strong media to counter the pharmaceutical industry’s lobbying narrative. From a civil society point of view, the strategy of forming a global people’s vaccine alliance, the naming and shaming, the embarrassment that goes with blocking it, showing the deaths, the suffering – because you’ll remember [that] for us, in waves 1, 2, and 3, there were no vaccines. It was only in wave four that we started getting vaccines and we were able to mitigate the deaths. The situation early on in Brazil, for example, was horrendous when there were no vaccines. I think yours was wave 2.

So, there were many countries going into multiple waves, with no access to anything – not even enough testing kits, or even vaccines. I think that the strategy of telling the world what was happening in real time [helped], which is much easier to do now with social media than it was during HIV-AIDS. You’re not just reliant on email and so, information could be shared much more easily. Having a global movement that was naming and shaming and an alliance – of not just medicine experts and activists, but trade unions, the Vatican, faith organizations, Nobel laureates, 170 former heads of state (that’s quite unprecedented) – to say quite early on, “relax the IP. You’ve got to relax the IP or you’re going to have a bigger crisis.”

I think the strategy of bringing in other actors quite early on was really useful. In HIV-AIDS, it took us a while to convince people that you need to deal with the pharmaceutical companies and their patent monopolies.

The strategy, also, of keeping the issue alive, of showing the public how much money these companies were making and how much money they got from public funds to research – in the case of vaccines, for example, Moderna, Pfizer, Johnson and Johnson – whose leadership made billions in profit - and giving information to show that at the heart of opposition to the waiver and not sharing the technology, it clearly had to be greed and profit over humanity. And again, it comes down to a system of capitalism and a system of accumulating profit or gouging in a pandemic.

There were petitions and protests – to the extent that COVID allowed. Obviously, our organizing strategies around the world were different than in the HIV-AIDS crisis because you couldn’t meet in groups and you couldn’t have a big stadium full of people to call on Pfizer to share a patent, obviously, because there were lockdowns and social distancing.

So, the social media strategies have really, really worked. I think we've underestimated what young people can do with Tiktok, Instagram and, to some extent, Twitter. Facebook's really old but there are other information sharing tools available too.

And then, what was really interesting, I think, just the final thing that really worked was that once the African governments finally came on board with the South Africa/India proposal, they did a lot of work in meeting with different Latin American and Asian governments, that also eventually came on board to support the waiver proposal.

There was a lot of pressure put individually on different country delegations to say, “if you don't support the waiver, don't block it; you're standing on the wrong side of history”.

There was a lot of bilateral work being done so that in the end, you've got seven or eight countries standing in isolation: the UK, the EU, especially Germany, France, Norway, and Switzerland. We got Brazil to do a U-turn because Bolsonaro started out not supporting the TRIPS waiver, right?

It seems like a long time, but basically all this happened within a year. I think when they started out, there were only a few co-sponsors, and you now have 67 co-sponsors and 100 countries supporting the waiver. If you look from January to December 2021, there has been a significant change in which countries and governments are supporting the waiver.

**Sur** • In your opinion, what is the biggest challenge for civil society in the struggle for justice and human rights in the context of the pandemic, and what would you point out as important lessons for the fight against new pandemics in the future?

**FH** • The biggest challenge for civil society right now is this notion that it's acceptable that there are people in the world that can wait, that it's acceptable in the minds of global leaders – despite what they say – that you can have a 7% (less than 10%) vaccination coverage in Africa when tools exist in the world! That is not equity and equitable access to life saving technologies. I don't know what the percentage coverage was in Latin America at the end of 2021. The rich nations are prioritized and have already started their booster programmes, and we haven't even done first and second shots in many low income countries.

Of course, another challenge has been the right-wing antivax movement that fuels vaccine hesitancy, that is linked to the anti-abortion movement and to this notion of choice, which is very Trumpian, and with it, disinformation. That's been one of the challenges.

I think the challenge for us is how do we show and make the case that it is totally unjust and immoral to have a global programme that prioritizes six or seven countries only. It is just simply unbelievable [that we're in a] situation where 85% of people in Africa haven't even received one dose of a vaccine. So, if you look at that map of Our World in Data, of where we started in January 2021 and where we are now, you still see many

parts of Africa that are just empty, where the blocks are just empty. People haven't been able to access vaccines.

The issue is how do you get a movement of people to believe that vaccine patents are wrong, that vaccine nationalism is not the solution, but also that we are deserving of access at the very same time as everybody else. It goes back to the issue of timely access. So, they'll say, "oh, but we're giving you your supplies now. You're getting it." But that's nine months too late. And the only reason why they can say "it's okay for you to be nine months too late" is because we are not in the rich North. We are in the Global South. We're black and brown.

Remember that we took part in the clinical trials. We contributed to scientific knowledge and to the data. It's not like we've all just been sitting around and saying, "Okay, give us your technology. Now, we want to use it."

There's an assumption that people in the Global South matter less and don't have equal value. It is really important for our movement to show that this is a human rights issue too.

Why is this a human rights violation? It's not just about, "oh, you've got to be nice to everybody." It is a human rights violation to deny the tools of innovation and scientific knowledge to as many people as possible, as fast as possible, at the same time.

We've argued in the *British Medical Journal* that it's a crime. It's a moral crime against humanity. It's vaccine apartheid.

So, that's the first challenge [for civil society]. The second one is: how is it that we have not secured the waiver yet or proceeded with compulsory tech transfer? How have we not won this battle of tech transfer and sharing? A year and a half or two years into this pandemic, we are still beholden to the industry who is calling all the shots, with little transparency.

As a movement, despite all the work we've done in the last 25 years and particularly in the last two years in this pandemic, how can we have a situation where the CEOs of Pfizer, Moderna and J&J are billionaires now?

They are still making a lot of money and calling all the shots. How did we create systems in all parts of the world where IP is sacrosanct and the WTO is the most important institution, when it shouldn't be in a pandemic, and where everything depends on when they have a ministerial conference, have a meeting, adopt a resolution. It's absurd. It feels like we're living in some Kafka novel or something. If you tell somebody in 50 years what went down, they won't believe it.

That's why we must record the story because nobody will believe that when this COVID pandemic hit, these were the countries that blocked it, these are the

companies that became rich and produced technology with public funding but did not share it. They are still controlling the supplies and decisions, and they're doing it in a way where there's no transparency in this pandemic. Your government, my government and everybody else are using all our money to buy these vaccines. And now, we have to buy a second shot and a third shot, and we don't even know if there's going to be a fourth shot. We don't know the terms of the contracts and if you want to know them, you'll have to spend two years in a court of law.

[It's like we are] operating in a rule of law order system where we must follow the rules, but only the rules that apply to the industry insofar as IP is concerned. They don't want to follow the rule of law on transparency in procurement or open contracts, for example.

The courts in Colombia have said that their government must open the contracts [to the public] and I think in Brazil, they are trying to get certain laws passed on this. But these companies are saying to us, “we won't even tell you who signed the contracts”.

So, the challenge going forward for us as a movement is how do we deal with corporate power, especially corporate power that's involved in the provision of life-saving treatment and technologies and services. We cannot carry on like this for another 10 years. There could be a treatment that could be a miracle, that could really be useful for COVID and we may all need to access that, but this is how the industry will behave. They haven't shared technology or information on the contracts even. They're blocking the waiver. They're still in control and they've made billions. They're in a really “good” position for them, not for us. And our governments have allowed this to happen.

Our work going forward has to be that the WTO has to reform. It needs to be fundamentally reformed or it must get out of the way. It is not an appropriate vehicle to resolve life and death issues around access to life-saving treatment. TRIPS and the Doha declaration have not helped us with COVID. It has hindered us.

The mere fact that medicines, diagnostics and vaccines are included in the definition of the TRIPS Agreement is a problem for us. We have to take that out, at least, from the definition of what should be patentable, or what should be protected by an exclusive monopoly. So, we've got a lot of work ahead of us.

But if we don't deal with this properly, climate technology for the climate crisis will be held close by these companies. They'll assert their IP rights. The German government in particular will not want to share the green technologies that they are busy developing, also through public funding with public scientists.

There's a reason why the waiver was so vehemently opposed: it has to do with COVID, but also with what's next, and they don't want to share the IP on that because it will mean that they lose control, and they lose profits.

Finally, governments in the Global South need to rethink how much power and control they want to hand over to pharmaceutical corporations. Because this pandemic has taught us that you're going to have to take very forceful action.

There is no voluntary action on the part of these companies that will actually help you save lives, because they won't do it fast enough or at all.

And volunteerism, benevolence, handouts and donations – they don't work. Often, we use the word “decolonize”, but we have a colonial global health system in place, which is the reason why we had 7% coverage for Africa at the end of last year, why supplies are prioritized for the richer North, why seven nations can basically block a proposal that is supported by a hundred nations at the WTO. So yes, we have a crisis.



Fatima Hassan, human rights lawyer and founder of the Health Justice Initiative (HJI).

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*Interview conducted by Renato Barreto in January 2022.  
Original in English.*

## NOTE

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1 • For more information on Fatima Hassan's work, visit: Health Justice Initiative, Homepage, 2022, accessed January 27, 2022, <https://healthjusticeinitiative.org.za/>.



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