

Civil Society Statement on Utilizing Flexibilities in the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement to Advance Access to Medicines in Kenya and Uganda amidst COVID-19

29 March 2021

We, the undersigned, are communities of people living with and affected by HIV, TB and Non Communicable Diseases (NCDs) and Civil Society Organizations working in the area of health and human rights in Kenya and Uganda. We make this statement following a regional meeting that we recently held on 17th to 19th March 2021 in Machakos County, Kenya. During the regional meeting we discussed existing opportunities and strategic interventions to ensure that flexibilities in the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement are utilized to improve access to essential medicines in Kenya and Uganda.

During the regional meeting we launched a study report that assessed the extent to which Kenya and Uganda have implemented TRIPS flexibilities. The study established that both Kenya and Uganda have incorporated the following flexibilities in their legal frameworks: compulsory licensing, government use order, voluntary licensing, parallel importation, Bolar provision, as well as the transition period for patents on pharmaceuticals in the case of Uganda. This therefore means that Kenya and Uganda have an opportunity to utilize these TRIPS flexibilities. Incorporating them into national laws alone cannot on its own solve the intellectual property-related challenges to access to medicines.

While in the past one year governments' strategies, attention, personnel and infrastructure have been shifted to COVID-19, we note that, communities of people living with and affected by HIV, TB and NCDs in Kenya and Uganda have experienced massive disruptions in accessing treatment and health facilities. This is despite the fact that people with these underlying medical conditions are at an increased risk for severe illness from the virus that causes COVID-19.

We note that despite the fact that the best chance of staying safe from COVID-19 is to have vaccines, diagnostics and treatments that are available for all, this is unlikely to happen in Kenya and Uganda. Rich countries have been racing to hoard vaccines in advance and now have enough doses to vaccinate their populations almost three times over, while 9 in 10 people in the poorest countries will not get a vaccine.¹

THEREFORE, the undersigned Civil Society Organizations and communities of people living with HIV, TB and NCDs call upon government ministries and agencies as follows;

1. We call upon the Ministries of Health of both Kenya and Uganda to redouble efforts to ensure uninterrupted supply of essential commodities and services to respond to HIV, TB and NCDs. And that this should be done alongside efforts to slow the spread of COVID-19.
2. We call upon the Ministry of Health in Kenya and Uganda, in collaboration with their respective national emergency response teams, to do everything in their power to ensure COVID-19 vaccines are available, free of charge to the public, fairly distributed and based on need not ability to pay.
3. We urge the Ministries of Trade in both Kenya and Uganda to work with the Ministries of Health in exploring and utilizing all available flexibilities in the TRIPS agreement to ensure vaccines are available to all.
4. The world needs a #PeoplesVaccine, not a profit vaccine. We call upon pharmaceutical companies and research institutions to share their technology, know-how and intellectual property on Covid-19

¹ See Global Justice Now "A Call for A People's Vaccine," available at <https://www.globaljustice.org.uk/our-campaigns/pharma/we-need-global-access-to-covid-19-vaccines/call-for-a-peoples-vaccine/>

- vaccines and treatments through the World Health Organisation's Covid-19 Technology Access Pool. Pharmaceutical corporations and research institutions, most of whom use government funding for research, must share the science, technological know-how, and intellectual property related to the vaccines to maximise production by other quality producers. We call upon all governments, in particular rich countries including the US, the European Union, Canada and Japan, to support the proposal submitted by the governments of India and South Africa to waive the relevant chapters of the World Trade Organisation global agreement on TRIPS for the prevention, containment and treatment of Covid-19.
5. In line with this TRIPS study report, we call upon the Kenyan and Ugandan Ministries of Trade and Health, working in collaboration with other government departments, to make deliberate efforts to utilize the flexibilities incorporated in national laws to ensure access to all essential HIV, TB and NCDs medicines.
 6. In particular, we call upon the Uganda Registration Services Bureau and the African Regional Intellectual Property Organisation to ensure no pharmaceutical patents are granted until the lapse of the transition period for Uganda as a Least Developed.
 7. Further, we call upon the Kenyan Ministry of Trade to avoid at all costs introduction of TRIPs-plus provisions through bilateral trade agreements - specifically in the ongoing US – Kenya Free Trade Agreement. We also call for wider stakeholders' participation and consultations in the Free Trade Agreement (FTA) process; as well as transparency in the US-Kenya FTA negotiations.
 8. We also call upon Kenya and Uganda to consider cooperation at the East African Community level to broaden the market for locally produced medicines and cooperative research and development. The countries should work with the EAC Secretariat to implement the EAC Regional Pharmaceutical Manufacturing Plan 2017-2027, as well as interventions to enhance regional local production and consumption and access to medicines.
 9. We call upon the East Africa Community secretariat to ensure wide public participation, including of affected communities, to ensure that the interventions to enhance regional local production and consumption do not disrupt access to life-saving medicines and that their implementation does not lead to adverse effects on affected communities. Communities specifically call for further discussions on plans to tax importation of eight molecules.

Signed:

AIDS Healthcare Foundation (AHF)
 Center for Health, Human rights and Development (CEHURD)
 Coalition for Health Promotion and Social Development (HEPs Uganda)
 Dandora Community Aids Support Association (DACASA)
 Kenya Legal and Ethical Issues Network on HIV and AIDS (KELIN)
 Kenya Network of People Who Use Drugs (KeNPUD)
 Nelson Mandela TB HIV Community Information and Resource Center
 Non-communicable Diseases Alliance Kenya (NCDAK)
 Pamoja TB Group
 Southern and Eastern African Trade Information and Negotiations Institute (SEATINI) Uganda
 Uganda Non-Communicable Diseases Alliance
 Wote Youth Development Projects