FEMINISTS FOR A PEOPLE'S VACCINE

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"THE END IS NOT YET IN SIGHT! LONG-TERM PUBLIC HEALTH ACTION IS CRITICALLY NEEDED"

GERMANY'S OBLIGATION TO SUPPORT A GLOBAL PUBLIC GOOD APPROACH TO COVID-19 DIAGNOSTICS, VACCINES AND THERAPEUTICS.

Shadow Report to the 85th Session of the CEDAW

Shadow report to the 85th Session of the Committee on the Elimination of Discrimination against Women

"THE END IS NOT YET IN SIGHT! LONG-TERM PUBLIC HEALTH ACTION IS CRITICALLY NEEDED"[1]

GERMANY'S OBLIGATION TO SUPPORT A GLOBAL PUBLIC GOOD APPROACH TO COVID-19 DIAGNOSTICS, VACCINES AND THERAPEUTICS.

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1. Introduction

In January 2023, both the International Health Regulations Emergency Committee and the Director-General of the World Health Organization (WHO), Dr. Tedros Adhanom Ghebreyesus, confirmed that COVID-19 *continues to be a public health emergency of international concern (PHEIC)*. Noting that the world is in a better position than it was during the peak of the Omicron variant wave, he nevertheless highlighted the more than 170 000 COVID-related deaths in December 2022 and January 2023 alone, a high number compared to other respiratory infectious diseases.

The Director-General went on to point out that

> *"vaccines, therapeutics, and diagnostics have been and remain critical in preventing severe disease, saving lives and taking the pressure off health systems and health workers globally. Yet, the COVID-19 response remains hobbled in too many countries unable to provide these tools to the populations most in need, older people and health workers. Pandemic fatigue and reduced perceived risk, coupled with the continuing spread of misinformation, has led to drastically reduced compliance with public health and social measures. Moreover, care pathways for patients experiencing the serious negative impact of long COVID and the elevated risk of post-infection cardiovascular and metabolic disease are limited or not available in many countries."*

For these reasons, the Emergency Committee stated that long-term public health action is critically needed as there is little doubt that SARS-CoV-2 will remain a permanently established pathogen in humans and animals for the foreseeable future.

In other words, now is not the time to stop the fight for equitable access to COVID-19 diagnostics, therapeutics and treatments to complement vaccines - all of which are still under supplied to many countries particularly in Africa. *Only 30% of Africa's population is fully vaccinated*[2]. WHO further *cautioned* about future waves of infection throughout the world and the need for a significant level of preparedness, which low and middle-income countries

(LMICs) lack. As a consequence we have witnessed significant infections across countries *(see graphic here)*, and these numbers must be read in the context of serious underreporting, particularly in developing countries.[3]

One of the key causes prolonging the pandemic are Intellectual Property (IP) barriers which prevent equitable, non-discriminatory access to COVID-19 vaccines, diagnostics, therapeutics and treatments. This has resulted in continued inequality in vaccination between regions. Approximately 1 billion people in developing countries remain unvaccinated and also face serious challenges to accessing important therapeutics and diagnostics with detrimental consequences to public health.

The WHO Director-General has repeatedly *appealed to WTO member states* to reach an agreement on the extension of the TRIPS Waiver Decision of 17th June 2022 (TRIPS Decision), described in detail below, for diagnostics and therapeutics. He stressed that local production of vaccines, diagnostics and therapeutics is key not only to ending the pandemic but also for strengthening preparedness for future emergencies. "TRIPS" is the Agreement on Trade-Related Aspects of Intellectual Property Rights, administered by the World Trade Organization (WTO).

The *Office of the High Commissioner for Human Rights* has also noted with concern that "Vaccine equity and access to diagnostics and therapeutics is a fundamental component of the full realization of the right to health. Vaccines, diagnostics and therapeutics must not only be produced and made available - they must also be accessible to all persons. Yet, access to vaccines, diagnostics and therapeutic remains disturbingly uneven in many places".

This Shadow Report submitted to the CEDAW Committee for the review of Germany by the *Feminists for a People's Vaccine Campaign* focuses in particular on the impact of TRIPS, and the opposition by a minority of countries, including Germany through its membership in the European Union (EU), to a comprehensive temporary waiver from TRIPS implementation of IP on COVID-19 vaccines, diagnostics, therapeutics and other needed medical products.

According to analysts, *Germany's leadership was crucial* to obtaining the EU's consensus to the TRIPS Waiver. Unfortunately, as the EU stalled and refused, millions died, and economies crumbled. The final outcome adopted by the 12th WTO Ministerial Conference in June 2022 is very limited in nature. The final TRIPS Decision **applies only to COVID-19 vaccines to be used in developing countries when invoked and is applicable for only five years.** Only one aspect of the TRIPS Agreement has been temporarily waived. This relates to the **export of vaccines manufactured under a compulsory license** (manufacturing authorisation without the consent of the intellectual property holder, with reasonable remuneration paid). This license is allowed without the quantity so manufactured being predominantly for the domestic market of the manufacturing country alone.

The TRIPS Decision also provided for WTO member States to decide on the extension of the Decision to cover COVID-19 therapeutics and diagnostics within 6 months from the date of the Decision. However, yet again, due to *opposition and stalling tactics from developed countries*, including Germany, this critical and much needed extension has been delayed.

This opposition has severe and disproportionate impacts on the right to health of women and girls in developing and least developed countries, raising concerns about Germany's compliance with its:

(a) extraterritorial obligations under CEDAW, including duties to meet the standards of substantive equality and non-discrimination when operating within the multilateral system and as a member of the EU; and

(b) duties of international cooperation and assistance, including refraining from infringing on the ability of **other States** to fulfil their own human rights obligations.

In particular, **we call into question Germany's compliance with its obligations under Articles 2 and 10, 11, 12 and 16 of CEDAW; General Recommendations 24 and 35, and the duty to cooperate internationally** to realise women's rights both within and outside its territory. These obligations include Germany's duties:

(a) to refrain from making or contributing to the making of laws and policies which directly or indirectly result in the denial of women's equal enjoyment of their rights extraterritorially as well as within its jurisdiction; these include refraining from supporting policies that prevent access to vaccines, diagnostics and therapeutics needed to respond to COVID-19;

(b) to cooperate internationally and create an enabling environment conducive to the universal fulfilment of women's economic, social and cultural rights by **unconditionally extending the TRIPS Decision to facilitate universal access to diagnostics and therapeutics**, taking into consideration the inequitable access to therapeutics where most of its limited supply has been *procured* mainly by wealthy countries with only 16% of the global population (described further in the *shadow report submitted by FPV* for the review of Belgium in September 2022);

(c) to recognise that the TRIPS framework has an adverse impact on prices and availability of medicines and that IP should not be a barrier to Germany's international human rights obligations to equitably share the benefits of scientific research widely and in furtherance of its human rights obligations.

Failure to comply with these core obligations has a **multiplier effect on all aspects of women's rights covered by the Convention**, including the rights to health, education, livelihoods and employment, and to live dignified lives free from violence.

We, therefore, respectfully request that, in accordance with Germany's CEDAW obligations, the Committee encourages the State Party to unequivocally:

(a) Support the expeditious extension of the June 2022 TRIPS Decision, that was the outcome of the negotiations on the TRIPS Waiver proposal **to cover the production and supply of COVID-19 diagnostics and therapeutics without any further conditions**[4] (Section 3 of the FPV *shadow report*, submitted in September 2022 for the review of Belgium).

(b) Support the full use of existing TRIPS flexibilities such as compulsory licensing of patents and adequate exceptions to protection of undisclosed information, copyright and industrial designs.

(c) Pledge not to use the dispute settlement mechanisms of the WTO and other trade and investment agreements, or other means to stop or dissuade countries from using any TRIPS flexibilities for producing, using, exporting or importing medical technologies and products.

(d) Ensure that the EU/European Commission does not make any TRIPS Plus demands in its trade agreements and negotiations with developing countries.

(e) Conduct a comprehensive and participatory review of its new Feminist Foreign Policy, including its trade-related provisions, to ensure policy coherence and compliance with CEDAW across all areas of its international trade obligations and to ensure that its actions within WTO, including *vis-a-vis* its membership in the EU, recognise the primacy of its international human rights obligations which must take precedence over intellectual property regimes.

(f) Ensure that Germany's pandemic responses are equitable and it supports and puts forward concrete proposals to advance substantive equality and prioritise human rights in relation to COVID-19 including for future health emergency preparedness and response in the various fora Germany engages in[5].

2. EU and Germany's current position on the TRIPS Decision

The necessity for swift access to low-cost medical products to prevent, diagnose, treat and cure COVID-19 patients drove the call for a comprehensive TRIPS Waiver by India and South Africa, co-sponsored by 65 WTO member States in 2020. The pandemic caused a sharp rise in demand

for medical supplies throughout the world and the ability of countries to adequately combat the outbreak was hampered by acute shortages, making the TRIPS Waiver urgent.

At the start of the pandemic, world leaders, including then German Chancellor, Angela Merkel, had called COVID-19 medical technologies "global public goods". However, Germany, leading the EU, *opposed the call for a temporary waiver* of IP protection for COVID-19 medical products during the almost 2 year-long dispute at the WTO in 2022, even as there was increasing recognition that there had been little progress in the world's poorest securing access to COVID-19 vaccines.

Further, Germany as part of the EU, pursues TRIPs Plus provisions in trade negotiations with developing countries. It did so during the pandemic as well. EU proposals include demands to adopt data/marketing exclusivity, patent term extension etc. which can complicate and undermine the use of TRIPS Flexibilities such as compulsory licenses. Hence whilst Germany itself amended its laws for the issuance of a compulsory license in response to the pandemic and argued for the use of TRIPS Flexibilities instead of a TRIPS Waiver at the WTO, it was unconscionably negotiating agreements bilaterally that could severely and significantly undermine such use[6].

Germany and the EU have constantly stalled the comprehensive TRIPS Waiver and continue to prevent the extension of the TRIPS Decision, and this has been done despite 50 members of the European Parliament expressing their "explicit support to an extension of the product scope of the TRIPS Decision to COVID-19 therapeutics and diagnostics" in a *letter* to the EU Trade Commissioner and the EU Council on Trade. The MEPs recalled a standing decision of the Parliament "for the EU to support the granting of a temporary waiver from certain provisions of the TRIPS agreement for COVID-19, in order to enhance timely global access to affordable COVID-19 vaccines, therapeutics and diagnostics by addressing global production constraints and supply shortages".

Green MEP Sara Matthieu, who initiated the letter, *expressed* disappointment at the postponement of the extension, saying "…it means that for yet another year, people will be dying because of the lack of access to tests and medicines", warning European leaders that if they did not push for a broader waiver they would "have a lot of human misery on your conscience." Developed nations that are home to major pharmaceutical giants, like Germany, have been in the forefront of the fight against the TRIPS waiver choosing to protect intellectual property rights, putting the interests of Big Pharma ahead of equity issues and international cooperation to mitigate the effects of the COVID 19 pandemic.

While no individual country can resolve a global health crisis, each is obliged to cooperate internationally towards the development of solutions that, first and foremost, enable the

protection of human rights and uphold the standards of non-discrimination and substantive equality. The individual obligation to comply with international human rights standards is heightened when countries like Germany are members of powerful blocs, such as the European Union (EU), given the level of power and influence such blocs wield.

The current **intellectual property approach** adopted by the EU, including Germany, has failed to meet this obligation. This protectionist approach places almost all COVID-19 vaccines, therapeutics, treatments, and diagnostics in the hands of private, multinational pharmaceutical corporations, even when taxpayers finance a significant part, sometimes more than 90%, of product research and development. As a consequence, these corporations can and have impeded access in the pursuit of profits. IP barriers that prevent the transfer of technology concentrated in the hands of private corporations have barred even middle-Income countries with proven capacities to produce their own vaccines. For instance, currently, *less than 0.1% of the global supply of vaccines are produced in Africa* and only *1% of vaccines* used in Africa are manufactured on the continent. When technological capacity does exist as in the case of therapeutics (not requiring transfer of technology from the IP holder), IP barriers frustrate scaled-up manufacturing of generics.

While the European Parliament expressed support for the Waiver, the European Commission was staunch in its opposition. *MEP Anna Cavazzini*, of the German Green Party, who had been advocating for a comprehensive TRIPS Waiver, credits Germany's resistance to the government's focus on protecting BioNTech, the country's largest corporation in the biotechnology field and responsible for the Comirnaty vaccine development in a partnership with Pfizer. The proposed Waiver was blocked by Germany on the grounds that removal of IP barriers would prevent future innovation and investment in the country, *with little to no evidence to support this claim*. In reality, the inclusion of pharmaceutical products under the TRIPS Agreement has exacerbated the problem of timely, equitable, and affordable access to life-saving medicines.

The WHO continues to *express concern* about the ongoing risks of COVID-19, stating that "[w]hile eliminating this virus from human and animal reservoirs is highly unlikely, mitigation of its devastating impact on morbidity and mortality is achievable and should continue to be a prioritized goal." To achieve this end, it has been recommended, that governments enhance access to COVID-19 diagnostics and therapeutics for their populations, stating that "[v]accines, therapeutics, and diagnostics have been and remain critical in preventing severe disease, saving lives and taking the pressure off health systems and health workers globally." Treatments for COVID-19 are still out of reach for the majority of developing countries. The landscape for COVID-19 vaccines, treatments and diagnostics is an evolving one. Insight into effective treatments for the early stages or in the post-hospital or long-COVID setting is still limited. There are also supply constraints of drugs that have been strongly recommended by

the WHO for the treatment of COVID-19. For example, as of December 2022, Paxlovid was still *unavailable in low-income countries*, having been pre-purchased by wealthier countries in the first half of 2022.

The existence of patents and multiple new patent applications enable pricing of these medicines to be kept high, too high for low- and middle-income countries. For example, WHO has recommended existing rheumatoid arthritis drug tocilizumab for COVID-19. However, *shortages were widespread* while limited supplies are being snapped up by rich countries. In South Africa, the drug costs around USD2,000 per patient. As a result, despite an expert panel finding that tocilizumab reduced deaths, the recommendation was for the medicine to not be used because it is *"not affordable at the current offered price."*[7]

Although Pfizer has in place a voluntary license with Medicines Patent Pool for the supply of generic Paxlovid, it *excludes 47% of the world's population in developing countries* from this license. Notably countries excluded include Argentina, Brazil, China, Malaysia and Thailand, where established generic production capacity exists. Eli Lilly's voluntary license to Indian generic companies on Baricitinib, another WHO recommended COVID-19 drug, has similar restrictions inhibiting the supply of generic versions to any other country outside of India.

It is therefore clear that four years into the pandemic, equitable, non-discriminatory access to COVID-19 diagnostics, vaccines and therapeutics is still unavailable. Approximately 1 billion people in developing countries remain unvaccinated. Africa continues to lag far behind with only *30% of its population fully vaccinated*. This disparity has paved the way for *increased transmission and more deaths*, especially among unvaccinated high-risk groups, and increased risk of new variants emerging. Decline in testing has also meant a disregard for the evolution of the virus, prompting the WHO DG to caution *reported cases are increasing* in almost 70 countries worldwide.

As a consequence, Africa in particular has been *reporting rising death rates*, while in stark contrast developed countries, including Germany, have achieved over 75% in vaccine coverage. The *WHO DG has called* for support to ensure that all countries reach at least 70% vaccination coverage as soon as possible and noted "continued supply-side problems for tests and therapeutics" because of "insufficient funds", and "insufficient access". Most damningly, the **Committee on the Elimination of Racial Discrimination (CERD) has rightly observed that this "pattern of unequal distribution within and between countries … replicates slavery and colonial-era racial hierarchies; and… further deepens structural inequalities affecting vulnerable groups", including women and girls.**

The only solution that ensures compliance with CEDAW and other international human rights obligations, with the potential of dismantling structural inequalities noted by CERD, is

an *equitable global public good approach* [8]. As a powerful member of the EU and the global economy, Germany's compliance with these standards is vital.

3. Intellectual property regimes with their barriers are not the answer. States must apply a global public good approach with equitable access to protect women's right to health

Globally, as of 21 March 2023, there have been 761,071,826 confirmed cases of COVID-19, including 6,879,677 deaths, *reported to the WHO*. The pandemic made it clear how crucial it is to address the fundamental determinants of health in addressing such crises exposing the limitations of the current approach to health.[9]

Resources that benefit everyone, that cannot be produced on the market and that are maintained by collective investment are considered **public goods**. The failure to fund health as a public good has heightened the vulnerability of countries to COVID-19. The way forward for healthier populations therefore necessitates addressing the limitations of the current understanding of health on a national and international level. The right to health can only be strengthened if health is considered a public good.

The world has been reminded by COVID-19 that protecting the health of those who are most vulnerable protects not only their health but also the health of the general population. The health of the few is linked to the health of the many.

The pandemic has shifted attention to marginalized groups that are most at risk including the homeless, migrant workers, low-waged and informal workers, single women heads of household and older persons and people from minority ethnic, racial and indigenous communities. It has also highlighted the disproportionate impact on women. To reform these constrained, transient and fragmented initiatives, it is imperative that health is approached as a public good. This strategy necessitates a collective investment, particularly by States in the global North, such as Germany, and institutions, such as the EU, that structure decision-making processes that have long term implications for many of our countries.

Rethinking our individualistic view on health and the structures that result from it will be necessary if we are to treat health as a public good. This would entail prioritizing the development of systems that promote health and making investments in the conditions that promote prevention of diseases as an essential component of the global commons supported by collective investment.

Global investment in sectors directly related to health, such as universal access to medicines, diagnostics, therapies, and treatments, is frequently the focus of arguments for framing health as a universal public good. To understand how they affect health outcomes, it is also important to investigate the global structures that regulate systems beyond healthcare. Recognizing that pandemics do not respect national borders requires an international approach to health to lessen the effects of any future pandemic. All nations should view health as a public benefit.

4. EU and Germany's position on the original TRIPS Waiver proposal and its impact on women's rights & violations of its Extraterritorial Obligations as well as CEDAW Articles 2, 10, 11, 12, 16, General Recommendations 24 and 35, and the duty to cooperate internationally

During Sweden's constructive dialogue in **October 2021**, the CEDAW Committee *observed* that the implicit opposition of EU Member States (Germany is an EU Member State) to waiving WTO intellectual property rules might constitute a violation of the Convention, considering, in particular, the disproportionate effects of COVID-19 on women and girls in developing countries and the fact that this could have been prevented by the action of countries to ensure equitable access to vaccines.

Subsequently, in Switzerland's review at the 83rd CEDAW Session in October 2022, the Committee included in its concluding observations that Switzerland's extraterritorial obligations were not met by its opposition to the TRIPS Waiver at the WTO, with disproportionately detrimental effects for women in the Global South, and recommended the State took all the necessary measures to support and promote women's access to COVID-19 vaccines.

Indeed, the Committee will be well aware that the social and economic fall-out of the pandemic has exacerbated gender inequalities with multi-layered intersectional identities of race, class, caste, sexual orientation and gender identities, ethnicity, age, ability, religion and migrant/citizenship status, especially in developing and least developed countries, impacting women's access to healthcare, as well as their economic and educational opportunities.

In particular, the avoidable prolonging of the pandemic due to inequitable access to COVID-19 diagnostics, vaccines and therapeutics has led to the following interconnected violations under CEDAW. Some of these violations were pronounced during the height of the pandemic and the lockdown. However, the return to 'normalcy' has been very uneven across countries. In some LMICs, the negative effects of the pandemic still persist, especially on women and girls due to austerity measures and a weakening of social security provisions and safety nets:

(a) **Articles 10 and 16 (education; family law and marriage):** Economic stress caused by the pandemic has led to gender-based exclusions. In Asia, girls have been *quitting* school education to supplement household income in menial jobs. School closure and resultant online education and limited access to digital equipment, excluded poor children, especially girls[10]. Women and girls were *11% more likely* to drop out of school during the COVID-19 pandemic. Even as schools open, the combination of *education budget cuts* and families under financial strain is likely to result in more girls remaining out of school to help in domestic care work. There are *reports* of trafficking of girls, and an *increase* in child marriages due to economic stress. School closures increase child marriage risk by *25% per year*. UNICEF *estimated* 10 million additional children before 2030.

(b) **Article 11 (employment):** A World Bank Group *study* found that women were 11% more likely to have lost a job during the pandemic due to multifaceted reasons including patriarchal norms and gender stereotypes[11]. Job losses for women, combined with increased domestic and unpaid care work have further *reinforced* barriers to economic inequality. Across 33 countries representing 54% of the global working-age population, *women spent 55% of their working time* in unpaid work, compared to 19% for men. In Asia Pacific, 28% of *women took up unpaid care and domestic work* as their main economic activity, compared to only 2% of men. Within the health system, women frontline healthcare and service workers *constitute* around 70% globally, and are at the lower end of health worker hierarchies, experiencing poorer work conditions, low wages and job insecurity. Their pay on average is about *24% lower than men* and 20% less overall.

(c) **Article 12 (health):** As resources are reallocated to fight the pandemic and health care services diverted to combat COVID-19, other services considered 'non-essential' are affected. These include a *range of sexual and reproductive health services* such as maternal health care, contraception, abortion and gynecological services affecting women and girls. *Approximately* 12 million women in 115 developing countries experienced disruptions in their access to contraceptive services, leading to *1.4 million unintended pregnancies* in just the first year of the pandemic. The risk of unwanted pregnancies is *especially high for girls* with serious consequences for life opportunities.

(d) **General Recommendation 35 (gender-based violence):** The pandemic has led to an *increase in domestic violence*, as women were locked in with perpetrators for prolonged periods, with limited access to support services. There has been a 30% *increase* in reported cases of GBV globally and trends from African countries show a clear increase in GBV. Data from *call centres in Zambia* indicate an increase in violence against girls (27%) and against women (38%).

(e) According to **General Recommendation 24**, in relation to international agreements, "States parties should take steps to ensure that these instruments do not adversely impact upon the right to health. Similarly, States parties have an obligation to ensure that their actions as members of international organizations take due account of the right to health." In this regard, General Recommendation references international financial institutions, such as the International Monetary Fund and World Bank, requiring State parties that are members of these institutions "to pay greater attention to the protection of the right to health in influencing the lending policies, credit agreements and international measures of these institutions." By analogy, State parties that are members of the WTO, such as Germany, are required to pay greater attention to protection of the right to health when engaging with its procedures and agreements, and ensure no adverse impacts.

(f) Moreover, **core obligations under Article 2** to eliminate all forms of intersectional discrimination are affected by limited to no access to COVID-19 diagnostics and therapeutics. This gendered pattern of COVID-19 impact is broadly similar to those witnessed during the HIV/AIDS, Ebola, and Zika outbreaks. This only emphasizes the need to address the *"structural determinants of gender inequality*—e.g., political participation and economic systems"—and the "intersections with other inequities" to combat the detrimental gender impacts of COVID-19. It also demonstrates the critical importance of **the duty of international cooperation and assistance** in redressing human rights violations that have already occurred and ensuring responses to COVID-19 and other future pandemics address structural inequalities which meet international human rights standards, including CEDAW.

In this regard, the CEDAW Committee 2020 *joint call* for action highlighting the urgent need of women and girls for international solidarity and cooperation remains highly relevant. Here, the Committee noted how the various challenges of the pandemic that hamper these efforts may deepen poverty and inequalities, particularly in countries without robust supporting systems. The Committee also urged States to be aware of these risks and honour their duty of international assistance and cooperation. As stated in section 3 above, we reiterate that **an equitable public good approach to COVID-19 is needed to ensure protection of girls and women's right to health and other human rights.**

This duty is directly linked to a range of international human rights, including the right to enjoy the benefits of scientific progress, established by both Article 27 of the Universal Declaration of Human Rights (UDHR) and Article 15 of the International Covenant on Economic Social and Cultural Rights (CESCR)[12] and the core obligation to ensure minimal levels of economic, social and cultural rights protected under ICESCR and CEDAW. In the case of the right to health, this includes essential primary health care and medicines as well as prevention, treatment and control of epidemics and other diseases by making relevant technologies

available and implementing and/or enhancing relevant immunization programmes and other strategies[13]. Moreover, in the context of COVID-19, **the CEDAW Committee has *emphasized* that States "must address women's increased health risk through preventive measures and by ensuring access to early detection and treatment of COVID-19."**

5. Germany's opposition to the June 2022 TRIPS Decision extension is inconsistent with the findings of its Feminist Foreign Policy

This review cycle is an opportunity for the CEDAW Committee to ensure that women's rights are central in ongoing policy formulations in Germany, within the EU, and internationally. This includes policy measures to tackle the COVID-19 pandemic, which manifests a range of structural barriers to substantive equality.

Access to Vaccines, Therapeutics and Diagnostics, a critical part of a comprehensive solution for combating COVID-19 as discussed above and decisions with regard to this at the WTO, WHO and other forums including the EU implicates Germany's extraterritorial obligations under CEDAW to ensure that its foreign policy determined actions do not contribute to, or facilitate infringements of women's rights.

Germany's commitment to women's rights is already demonstrated in its Feminist Foreign Policy principles unveiled on March 1, 2023, with the goal of making women's rights and gender equality the central plank of Germany's international relations. Germany's Minister for Economic Cooperation and Development, also unveiled a new plan for assisting women in developing nations at the same time. Germany, thereby, *joins a growing list of countries that have recently embraced feminism in their foreign affairs*, including Canada, France, Luxembourg, Mexico, Netherlands, Spain and until recently Sweden, some are countries within the EU.

The new guidelines provide a framework for integrating gender equality and women's rights into several facets of German foreign policy. However, they also bring up challenging questions about what it really means to put these principles into practice, including how to measure implementation progress; how to deal with its extraterritorial obligations; and most importantly, how to reconcile the Feminist Foreign Policy framework with the trade policies of the German government as articulated in forums such as the WTO. This is particularly moot as women's rights experience severe setbacks in the context of COVID-19 and long COVID, as well as Germany's stand at the WTO, MC12, and other relevant forums.

Germany's Feminist Foreign Policy objectives aimed at enabling the rights, representation, and resources of all women and girls can be strengthened with the CEDAW Committee's assistance. A Feminist Foreign Policy could be interpreted more broadly as a strategy that seeks to remove obstacles to gender equality and incorporate a gender perspective in all policy creation and decision-making. This objective can be put into practice by ensuring that all necessary measures are taken to eliminate discrimination against women and girls through equitable global access to COVID-19 medicines, vaccines, and other medical products. It can also enhance Germany's obligations to promote international cooperation and solidarity through the transfer of technology and manufacturing expertise needed to expedite vaccine production and help diversify and increase the manufacture of generic therapeutics and diagnostics in LMICs.

6. Conclusion

The continuation of risk consequent upon lack of access to vaccines, diagnostics, therapeutics and treatments due to the non-waiver of IP regimes have made women particularly vulnerable to infections from mutations of the virus, long COVID and resultant after effects that disproportionately impact their socio, economic and cultural rights. States Parties should ensure access to affordable and quality COVID-19 related healthcare and services, including testing, treatment and potential future vaccines, for all. The limits to women's access to healthcare and healthcare products, the continued restrictions to access to education, employment and livelihoods, and the increased risk of gender-based violence place an obligation on States Parties to the CEDAW Convention, such as Germany, to ensure that measures taken to address the COVID-19 pandemic do not directly or indirectly discriminate against women, including women affected extraterritorially from their actions.

When resources are scarce at the national level, States Parties have a duty to seek and provide international cooperation and assistance. International cooperation is essential in the context of COVID-19 for preventing, managing, and monitoring the pandemic's effects in medical, economic, social, and other areas. In order to combat diseases that are easily transmissible across borders, the entire international community must act as one. CESCR has called on States to honor their obligations to contribute to the enjoyment of all human rights, including the right to health, globally and develop strategies and mechanisms for a sufficient production and a global equitable distribution of vaccines for COVID-19.

Everyone has the right to the enjoyment of the highest attainable standard of physical and mental health, and one crucial element of that right is access to a COVID-19 vaccine that is safe, effective, and based on the most recent scientific developments[14]. Equally essential is affordable and equitable access to Diagnostics, Therapeutics, Medicines and Treatments.

States consequently have an obligation to adopt all the necessary measures, as a matter of priority and to the maximum of their available resources, to ensure all persons' access to vaccines against COVID-19, without any discrimination[15]. Due to the fact that many countries are unable to develop their own vaccines and other required medical products, this task must be carried out both nationally and extraterritorially as States have a duty of international cooperation and assistance to people everywhere to ensure equitable access to COVID-19 vaccines, diagnostics and therapeutics. Since more developing countries have capacity to manufacture diagnostics and therapeutics, the removal of IP barriers through the immediate extension of the TRIPS Decision is crucial. This duty includes States exercising their right to vote as members of various international institutions and organizations as well as regional integration organizations like the EU[16]. All such international organizations should work to ensure that everyone has access to vaccines, therapeutics, diagnostics and treatments equally and should refrain from acting in a way that hinders this goal. Thus, States must strengthen their international cooperation to ensure that COVID-19 vaccines and other related products are swiftly available at affordable prices worldwide, including in least developed and developing nations.

Inordinate profits reaped by Big Pharma globally and vaccine nationalism practiced by countries of the Global North which stockpiled vaccines far beyond their need, including the recent disgraceful dumping of unused vaccines by Switzerland, contributes to continued violations of the extraterritorial obligations of States to refrain from making decisions that restrict their ability to fulfil their human rights obligations relating to the right to health and to make vaccines available to populations most in need. This, in turn, increases the danger of new variants arising that are more readily transmissible, deadly and maybe more resistant to vaccines currently in use[17]. There must not be a repeat, this time, of therapeutics nationalism.

In accordance with the United Nations Charter and applicable international law, States Parties have an obligation to respect the enjoyment of the right to health in other countries and to stop third parties, including business entities, from violating that right if they have the ability to influence those third parties through legal or political means. Whenever possible and as needed, States should promote access to essential health facilities, supplies, and services, including vaccines, in other nations[18]. Furthermore, States Parties are obligated extraterritorially to take the appropriate actions to make sure that business entities domiciled in their territory and/or under their jurisdiction do not violate economic, social and cultural rights overseas[19]. States should thus take all necessary steps to guarantee that these corporates do not violate the right of every person to access safe and effective COVID-19 vaccines, diagnostics, therapeutics and treatments by using IP regimes nationally or extraterritorially. Hence, the extension of the TRIPS Decision to include diagnostics and therapeutics currently under consideration at the WTO is the least that WTO member States, including Germany, can do.

A global economic recovery that is required to counteract the negative effects of the pandemic on girls and women's rights gains will be hampered if the extension of the TRIPS Decision is not approved for equitable and affordable access to COVID-19 diagnostics and therapeutics. In this context, we propose that the CEDAW Committee strongly recommends that Germany support these progressive proposals by using its influence within the EU and its voting rights in the WTO.

Endnotes

1- *Director-General of the World Health Organization, Dr Tedros Adhanom Ghebreyesus.*

2- *Figure from Our World in Data as of 31ST March, 2023.*

3- *As an example, early in the pandemic, Africa only registered one every seven cases of COVID-19 and Brazil, with the highest number of registered cases in Latin America, had a 18% underreporting rate. As of December 2021, of the more than 3 billion tests reported across the world, only 0.4% had been performed in developing countries.*

4- *Paragraph 8 of the June 17th Decision states: "No later than six months from the date of this Decision, Members will decide on its extension to cover the production and supply of COVID-19 diagnostics and therapeutics".*

5- *Developing countries have been pushing for language provisions that operationalize equity in access to medical products at the amendment process being developed during the Working Group on Amendments to the International Health Regulation meetings as reported on the January and March 2023 meetings.*

6- *See: EU-INDIA FTA text on IP: https://circabc.europa.eu/ui/group/09242a36-a438-40fd-a7af-fe32e36cbd0e/library/e83c104e-e20d-4100-bdfc-0216b540dafc/details.*

EU-INDONESIA FTA text on IP: https://circabc.europa.eu/ui/group/09242a36-a438-40fd-a7af-fe32e36cbd0e/library/c780d397-feb5-4263-8760-d14384d87456/details.

7- *The estimated large scale manufacturing cost for toxilizumab is USD40 per dose of 400mg. https://msfaccess.org/tocilizumab-second-drug-ever-recommended-who-covid-19-will-remain-unaffordable-and-inaccessible*

8- *Abdalla, S.M., Maani, N., Ettman, C.K. et al. Claiming Health as a Public Good in the Post-COVID-19 Era. Development 63, 200–204 (2020). https://doi.org/10.1057/s41301-020-00255-z.*

9- *Han, et al. 2020. Lessons Learnt from Easing COVID-19 Restrictions: An Analysis of Countries and Regions in Asia Pacific and Europe. The Lancet 0(0). https://doi.org/10.1016/S0140-6736(20)32007-9.*

10- *Country-level data on the gender gap in mobile ownership and mobile internet use indicate women consistently lag behind men.*

11- *Unemployment has disproportionately hit feminized sectors such as services and hospitality, where up to nine of every ten workers are women. Women make up 80% of domestic workers, of which 72% of domestic workers have lost their jobs as a result of the pandemic. Across the globe, 56% of countries report a higher percentage of women workers than men in the informal sector. During the first month of the pandemic, informal workers experienced income drops of 60% globally, and 82% in Asia and Latin America. Women entrepreneurs face specific challenges with lack of financial support, increase in unpaid domestic work, constraints in mobility during the pandemic and were 7% more likely to have closed their business than male entrepreneurs. In every region of the world, female-owned businesses experienced higher closure rates during the first year of the pandemic compared to male-owned businesses. Read more here and here.*

12- *CESCR Committee, General Comment 25 on Science and Economic, Social and Cultural Rights (article 15 (1) (b), (2), (3) and (4) of the International Covenant on Economic, Social and Cultural Rights, E/C.12/GC/25, 30 April 2020, para 45.*

13- *See CESCR, General Comment 14, article 12.2(c), paras 16, 44.*

14- *As per Article 15 of the International Covenant on Economic, Social and Cultural Rights and Article 27 of the Universal Declaration of Human Rights.*

15- *As per Articles 2, 12 and 15 of the International Covenant on Economic, Social and Cultural Rights.*

16- *As per the Committee on Economic, Social and Cultural Rights statement on public debt, austerity measures and the International Covenant on Economic, Social and Cultural Rights (E/C.12/2016/1), para.9.*

17- *Lynn Eaton, "Covid-19: WHO warns against 'vaccine nationalism' or face further virus mutations", The BMJ, vol. 372, No. 292 (1 February 2021).*

18- *As per General Comment No. 14 (2000), para. 39, of the Committee on Economic, Social and Cultural Rights.*

19- *As per General Comment No. 24 (2017), paras. 26 and 28, of the Committee on Economic, Social and Cultural Rights.*

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FEMINIST

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