**“*Global cooperation and measures to improve the universal access to health as a fundamental human right”* – Obijiofor Aginam**

**UN Office of the High Commissioner for Human Rights (OHCHR), Inter-sessional (virtual) seminar on access to vaccines and medicines, 8 December 2021**

In well over 2 decades since the establishment of the World Trade Organization (WTO) in 1995 driven by the push by leading economic powers for a rules-based international trading system, the debate on “trade-health policy coherence” has gained traction in the multiple arenas of trade diplomacy, global health governance, and human rights discourse and activism involving states and a conglomeration of non-state actors. On 2 October 2020, India and South Africa officially requested the World Trade Organization (WTO) to allow all countries to choose to neither grant nor enforce patents and other intellectual property (IP) related to COVID-19 drugs, vaccines, diagnostics, and other technologies for the duration of the pandemic, until widespread vaccination is in place globally, and most of the world's population has developed immunity.

Initially supported by over 100 (mostly developing) countries, negotiations for the IP waiver, as it is now known, has been stalled at the WTO for lack of consensus. The proposal does not have the support of the pharmaceutical industry, nor that of most high-income nations (European Union, Canada, Japan, South Korea, UK). Instead, these countries are pledging to share more of their own vaccines with low-income nations and to provide more funding to charitable vaccine-provision schemes such as COVAX. Countries opposing the IP waiver argue that current WTO rules already allow countries to apply for ‘compulsory licensing’ to override IP during emergencies.

What are the implications of the IP waiver for the right to health globally? I would argue that:

1. we have failed to learn lessons from a similar stalemate during the debate on patents and access to anti-retroviral drugs (ARVs) for HIV/AIDS that led to the Doha Declaration on TRIPS and Public Health.
2. The world is currently dealing with an infectious disease pandemic that has claimed more than 5 million lives, and over 265 million confirmed cases globally as of 6 December 2021, according to the WHO figures.
3. Vaccine uptake in Low- and Middle-Income Countries remains very low. In an emergency such as COVID-19, **compulsory licenses are extremely complex and time-consuming** to apply for. Lessons from South Africa and Brazil during the ARV crisis for HIV prove this fact. Bolivia is applying to the WTO to use the TRIPS flexibilities to allow it to manufacture Johnson & Johnson’s COVID vaccine. Compulsory licensing involves very complex and protracted negotiations including payment of compensation to the patent holder.
4. Developing countries that support the IP waiver are not asking for charity. They are asking for “**the right to develop and make their own vaccines, free from the worry that they will be sued by patent holders**” – Nature, 25 May 2021. There are also very useful lessons from South-South collaborative initiatives on technology transfer and access to ARVs for HIV/AIDS.
5. Vaccine protectionism or Vaccine nationalism does not protect anyone because of the mutual vulnerability to pathogenic microbes in an interdependent world – the rapid movement of people, goods and services across countries and regions. Vaccine nationalism leads to “vaccine apartheid” – the conscious or unintentional separation of the vaccinated populations mostly in rich and industrialized countries from the unvaccinated populations in Low- and Middle-income Countries. Vaccine apartheid is fueled by the fact that rich countries with just approximately 20 percent of the world’s population have bought up and stockpiled 60 percent of world’s vaccine supply. The rich and industrialized countries aim to first vaccinate 70-80 percent of their population in pursuit of herd immunity.

As the MSF has argued, “as an automatic and expedited solution to address patents and other IP barriers at the international level, the waiver is an important opportunity for all governments to unite and stand up for public health, global solidarity and equitable access”.

**The right of everyone to the highest attainable standard of health codified in the WHO Constitution, and several international and regional human rights treaties since the establishment of the UN is a powerful impetus to pursue a coherent and pragmatic policy coherence between human rights (health) and trade obligations at the WTO and elsewhere. In this debate, there is no reason why trade (IP) should trump human rights**.

Enlightened self-interestcompels all actors (states, and non-state) to contribute their respective skills, strengths and capacities towards the promotion and protection of health everywhere in an interdependent world. The globalization of public health is a powerful reminder that no one is safe in a pandemic. As Nobel Laurate Joshua Lederberg observed decades ago “**the world is just one village. Our tolerance of disease in any place in the world is at our own peril”!**