

Stronger international laws needed to prevent 'parallel pandemic of human rights,' say experts

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In a recent paper, law professor Faith Majekolagbe argues that international human rights law needs stronger teeth to prevent nations without timely access to a vaccine from suffering disproportionate harm when the next pandemic hits.

Credit: Ryan Parker

You could say we got off easy this time around. While COVID-19 has

killed almost 7 million people globally and caused widespread economic distress, it wasn't the worst pandemic the world could face.

The 1918 "Spanish flu," for example, killed at least 50 million, which has many global health and defense experts concerned that the next pandemic could be far more devastating than COVID, threatening global security more than conventional, nuclear or chemical warfare.

Making matters worse are the inequities exposed by COVID [vaccine distribution](#). It's why the World Health Organization is now working on an international accord to guide [pandemic preparedness](#), set for release at the 77th World Health Assembly to be held in May 2024.

In a [recent paper](#) that contributes to the debate, published in the *Australian Journal of Human Rights*, Faith Majekolagbe of the University of Alberta's Faculty of Law argues that international human rights law needs stronger teeth in the face of well-established protections for intellectual property. Otherwise, nations without timely access to a vaccine will once again suffer disproportionate harm.

We also now know that allowing a virus to run rampant in any population is short-sighted, giving it a better chance of mutating and endangering us all.

"The pandemic precipitated and exacerbated an existing but largely unresolved tension between the role of intellectual property protection in incentivizing innovation and the need to facilitate access to innovative goods on equitable and affordable terms," write Majekolagbe and her co-author, Tolulope Anthony Adekola of the University of Queensland.

"States have an obligation not to allow IP rights to stand in the way of the protection and enjoyment of the right to health of their citizens, as well as those of the global population as a whole."

Majekolagbe and other legal observers point to the "parallel pandemic of human rights" that accompanied the coronavirus, which prompted terms such as "vaccine nationalism" and "vaccine apartheid" to describe the restricted access some countries faced in trying to secure supply.

"Developed countries were hoarding vaccines and using the power of intellectual property law as a tool to ensure that they would continue to offer access to their own," says Majekolagbe.

As an expert in intellectual property law and the democratization of innovation and creativity, Majekolagbe argues that international human rights law ensures the basic rights and fundamental freedoms of all humans, affirming their universal character as inherent and inalienable.

Article 27 of the United Nations' Universal Declaration of Human Rights, for example, clearly states that everyone has the right to "share in scientific advancement and its benefits."

And yet, once vaccines for COVID were developed by more affluent nations—such as the U.K., the United States, the European bloc, Japan and China—governments began prioritizing access to it by their own citizens, even stockpiling essential materials for its production.

In response, India and South Africa proposed a temporary waiver of intellectual property rights in 2020 at the World Trade Organization for the duration of the crisis, a move that would have strengthened human rights law in the interests of global health, allowing less affluent countries to produce their own generic versions of the vaccine.

The move would have helped with a more coordinated and effective strategy to prevent, contain and treat infections from the virus, says Majekolagbe.

After two years of debate, WTO members reached a watered-down decision that did little to ensure equitable access to vaccines and enhance human health rights, she says. Rather than waiving [intellectual property](#) rights, it merely clarified the existing "flexibility" in international IP law and offered a five-year exception to an export restriction on COVID-19 vaccines.

"The decision did less for public health, including human health rights, and more for the preservation of IP monopoly, thereby pushing to the surface the existing and unresolved tensions between IP, human rights and public health," she and Adekola write.

Any policies aiming to resolve these tensions, they say—including the forthcoming WHO pandemic accord—must "ensure that private interests are subordinated to global [public health](#) needs and that vaccines and essential medicines are seen as fundamental rights of everyone, without discrimination."

As the world prepares for the next pandemic, vaccine nationalism must be eradicated for [human rights](#) law to have any real potency, they argue.

"Vaccine nationalism perpetuates inequities and deprives vulnerable populations of their right to health and protection against infectious diseases.

"It runs counter to the spirit of international co-operation and solidarity, which is essential in addressing global health challenges."

More information: Tolulope Anthony Adekola et al, Human rights law, intellectual property and vaccine nationalism: lessons for the post-COVID-19 world, *Australian Journal of Human Rights* (2023). [DOI: 10.1080/1323238X.2023.2286941](https://doi.org/10.1080/1323238X.2023.2286941)

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