



**FEMINISTS  
FOR A PEOPLE'S  
VACCINE**

## FEMINISTS 4 A PEOPLE'S VACCINE PODCAST EP11 Transcript



### What is the main takeaway from the MC12 process?

*With Ranja Sengupta, Yoke Ling and Vanita Nayak Mukherjee*

**Vanita Mukherjee [00:00:05]** Welcome to the Feminists for a People's Vaccine podcast, a space for imaginations, discussion and feminist analysis from the Global South. In this creative journey, we approach the tough questions brought to light by the pandemic. Join us to look at this once-in-a-lifetime event as a passageway to imagine a fair and just world for all.

**Ranja Sengupta [00:00:34]** Welcome to this podcast on the WTO's 12th Ministerial Conference, or MC12 as we call it, which was held in Geneva between the 12th and 15th of June this year, and the TRIPS waiver proposal that was co-sponsored and supported by over 100 developing countries to ensure key tools to fight the COVID-19 pandemic. This waiver proposal asks that Member States of the World Trade Organisation be exempted from the obligations under the TRIPS Agreement on Intellectual Property Rights. This waiver is meant to facilitate the manufacturing and therefore ensure widespread access to COVID-19 vaccines, diagnostic tools and also therapeutics or, in other words, treatment for the pandemic.

**Ranja Sengupta [00:01:21]** So let me first introduce myself. My name is Ranja Sengupta and I work as a senior researcher with the Third World Network. I work on a number of trade policy issues that span the World Trade Organisation, bilateral trade and investment agreements, and also UN spaces, including the SDGs and the Financing for Development process. Today it's my great pleasure to introduce Ms Chee Yoke Ling, who is the Executive Director of Third World Network. Yoke Ling is a lawyer by training and she leads TWN's work across many programmes. She has worked extensively on issues related to global intellectual property rules and laws and access to medicines issues. And she is also very familiar with all the shenanigans of the global negotiation

spaces. She has also been actively working with several women's rights organisations, including DAWN, IWRAW and others. So we are really looking forward to some great insights from you today, Yoke Ling. But before we get into the discussion on the Ministerial itself, do you want to tell us very quickly about what is this waiver issue all about? And does it really matter? Is it a really important tool for developing countries to ensure access to vaccines and diagnostics and treatment for COVID-19?

**Yoke Ling [00:02:38]** Thank you very much, Ranja. I'm glad we have a chance to have this conversation today. Just to look back on the whole debate around access to COVID-19 vaccines and treatments and diagnostics, the World Trade Organisation that most of us are familiar with is responsible for making sure that Member States and countries implement a whole bunch of agreements, which is under the purview of the World Trade Organisation or WTO. Now, one of the most important agreements that impact all our lives across the world is the Trade-Related Aspects of Intellectual Property Agreement, or what we called the TRIPS Agreement. And this actually covers obligations of all Member States of the WTO to enforce patents, copyright, trade secrets, industrial design, all the different things that together be called intellectual property. And they give monopolies to the manufacturers or the producers and exporters and the sellers for a minimum of twenty years and sometimes they can actually be longer.

**Yoke Ling [00:05:30]** And also, there was a spirit of solidarity and collaboration across the world. In 2020, you had Kahn (Prime Minister of Pakistan), you had the European Union Commissioner of Health (Stella Kyriakidou), Angela Merkel (former chancellor of Germany). They were all making statements: "Oh, we must all develop global public goods so that we can address COVID-19 together". All those promises, but very quickly, it switched over to a fight to see who will get the limited supplies. [00:05:51][21.2] A limited number of manufacturers mean that the supply is also going to be very limited. So, at the beginning of COVID-19 in 2020 when exploded, there was a big urgency around the world to develop as many vaccines as possible so we can actually try to contain the spread of COVID-19. At the same time, there was also a big urgency to look for medicines that could treat COVID-19 because vaccination was something that would normally take many, many years to roll out because you had to find the vaccines. You had to test the vaccines. And also many people were dying, they were being hospitalised and very, very seriously ill in the first phase. This was a real race around the world. Because we have a huge public health emergency at the global level, there was also a spirit of solidarity and collaboration. Governments from Europe and North America and Africa and Latin America and Asia across the world that we have to work together. So we had that spark of solidarity and collaboration promised. So we would read the newspapers about teams of scientists, clinicians, public institutions, working together to develop vaccines. Now, they didn't start from scratch. The new ways of doing vaccines and mRNA vaccines, which is what the so-called AstraZeneca and Pfizer vaccines are, that new technology is something that's been worked out by scientists in different parts of the world, for at least 20 years, if not more. So really, the speed with which we saw vaccines finally being developed and also approved is not something that happened within 12 months or 20 months. It actually is really backed up by decades of work. At the same time, there was also a race to also see what were the existing medicines that we have that are used to treat viral infections. For example, a lot of medicines for HIV could actually be repurposed to be used to treat COVID-19. And for that, you also need to do clinical trials and further research. So what are we talking about? At the beginning of

2020, a public health emergency, which we call a pandemic, massive global demand for vaccines to contain the spread and to reduce the severity and also treatment and to test. You need to have test kits and all of these need to be developed. And also, there was a spirit of solidarity and collaboration across the world. In 2020, you had [00:05:35]Kong, [0.0s] you had the European Union Commissioner of Health, Angela Merkel. They were all making statements: “Oh, we must all develop global public goods so that we can address COVID-19 together”. All those promises, but very quickly, it switched over to a fight to see who will get the limited supplies.

**Yoke Ling [00:05:55]** And so what we had was global demand, but limited production. What really then drove some countries to start working on. And this was India and South Africa taking the first step: “This is an emergency, we need to be able to temporarily suspend all this implementation of intellectual property so that we can open up the space for more potential manufacturers around the world to make more of these medicines, vaccines, diagnostics, so that we can actually have enough supply for the whole world”. So that’s the background for what we call the waiver. And waivers are actually part of the World Trade Organisation system for any one of the agreements of the WTO at the request of a Member State, then the membership of the WTO can together make a decision to actually temporarily suspend or waive implementation of any of the agreements, and it has been done before.

**Ranja Sengupta [00:06:43]** For this particular waiver. Why was this Ministerial Conference important? Wouldn’t governments just agree on the waiver even without the Ministerial?

**Yoke Ling [00:06:52]** Oh, absolutely. In fact, we all were hoping that sense of urgency that was at least politically expressed in different parts of the UN or the WHO by all these leaders, that it will quickly translate to a quick adoption of the waiver. Now, India and South Africa when they put it on the table, they were asking for it to be only also temporary. Now, at the beginning, they did not put any period in terms of number of years the suspension will take place, because we didn’t know how the pandemic was going to play out. So they left it open for negotiation. So it’s a very short, one and a half pages of a few paragraphs to agree. Now, they could have done it at any time and not have to wait for more than 20 months. Yes, you’re right, Ranja. It could have been done by the General Council as soon as possible in 2020 itself. But, of course, the resistance, there was huge opposition in the end when it comes down to the crunch of proving your actions by your words. We saw especially the European Union and within the European Union, the hardliners were Germany, France and outside the European Union membership of course there was the UK and also Switzerland. These are countries that have huge pharmaceutical industry based there and the influence of the pharmaceutical industry was so big that they actually shaped the positions of these countries and they became the biggest blockers to the waiver proposal. Which was very much a simple one, comprehensive in nature, covering all health products and the time would have been something to be negotiated and to cover really about 35 articles or sections of the TRIPS agreement that would be suspended temporarily across all types of intellectual property. And that resistance was what dragged on and on and on with all kinds of excuses, saying there was no evidence that monopolies would actually create a shortage. Can you imagine that? And, at the same time, Europe and the United States and Canada, all the rich countries, Japan, they were richer, they moved faster, many of the manufacturers came from their own countries or their regions, and they were buying up more than they needed of the vaccines that first rolled out. And so we saw this hoarding

across the headlines of all the newspapers around the world. And developing countries could not have access. Until today, big parts of Africa, for example, are still very under-vaccinated and many, many people do not even have two doses yet.

**Ranja Sengupta [00:09:01]** So after it faced such a lot of opposition, it finally went to the Ministerial for a decision this time. But what do you think of that decision that finally came out of MC12? I mean, we know that the outcome has been heavily criticised by civil society organisations, health experts. So what did we get finally? Did we actually get a waiver? And will this tool, whatever it is, really serve any useful purpose at all?

**Yoke Ling [00:09:26]** Yes, very good question. I think there was a very high expectation because it was really unexpected for tWN and so many of our partners like DAWN and so many organisations around the world. There was such a momentum, you had the People's Vaccine Alliance, and then you had Médecins Sans Frontières, you know. Many groups came together under different umbrellas and DAWN and TWN decided to launch the Feminists for A People's Vaccine because we wanted to mobilise the feminist groups and the women's rights groups that had not been so involved in access to medicines and the speed with which the responses came to each of these calls was amazing. And the media just caught on because this was such an obvious need to open up the freedom for more and more manufacturers to be able to produce for all countries and all peoples in the world. So there was very high expectation. I mean, Parliamentarians were being mobilised even in Europe, the European Parliament actually, you know, because of civil society, eminent persons, former Heads of States, even the Pope. So there was so much of that push. And parliamentarians across the world, including in the European Union, they actually called on the government to really do their part. Now, I think that high expectations meant that whatever we got in the end - and let's think about the objections, the different clash of interests, the power of the pharmaceutical industry - we actually, in TWN and in DAWN, we did not expect to get what we wanted.

**Yoke Ling [00:10:50]** This is really, really unprecedented. Because most of the time we think of intellectual property as something that is so untouchable, right? Developing countries, governments especially, feel that if we don't respect and protect intellectual property, foreign investors won't come to our country. That you have more than 100 countries supporting this and 65 actually saying this one and a half pages of decision is what we stand behind. That was very significant. I think, number one, that is probably the most valuable outcome of the last 20, 24 months, that there is awareness across government and the public that, you know, intellectual property is man made and if they do not serve us, public health, lives, then they should be put aside. So I think that is a very big awareness that we must continue to build and look at where we can still do things. Now, in the end, what we got is a very narrow outcome, okay? What do we have? We have basically a re-affirmation. Most of the paragraphs are really just reaffirming what is already in the TRIPS agreement. Now, the TRIPS agreement, you know, grants these monopolies through national governments, through national laws and the national offices of intellectual property. But it also tries to balance because none of these rights are absolute, and even the TRIPS agreement recognises that. So you balance the private rights of the holder of intellectual property against public interest, public health, even national development, food security. So that balance means there are tools built into the TRIPS agreement, one of which is called a compulsory licence,

which is a very important tool. Normally when you hold a patent or a monopoly, if anybody wants to manufacture or use that, they must get your permission. Now, when the big pharma company, let's say I'm a big pharma company and Ranja, you are a generic, another company in the developing country. You would like to make the same vaccine or medicine I have the monopoly over. You can come to me and ask me to give you a license and we can negotiate and I'll say "You've got to pay me X amount or whatever the percentage of your sales as royalty to me". I give you a license to go and manufacture and sell and a couple of conditions on that license. But if I don't give you a license and I refuse to give you a license, in a way that is so unreasonable, then the law of intellectual property says that my behaviour as the holder of that intellectual property, I'm abusing that monopoly and I'm not reasonable in actually allowing others to manufacture in this case of useful medical needs. Then, you, Ranja, as the other company, you can go to the government in the country concerned and ask for a license that is given to you to do the manufacturing without my giving you permission as the patent holder. And that's what they call a compulsory license, a licence given to another manufacturer without the consent of the holder. But you, Ranja, must still give me a small amount of payment and that is to be decided and normally that would be reasonably low because it's for public health, for example, right? So that's the background and this is already in the TRIPS Agreement. Now what the TRIPS decision, the waiver decision in the end said is you can use compulsory license. It is there, you can use it. So it reaffirms that. It's important. Because in the past when a country tries to use a compulsory license, it's a lot of pressure. Even though it's purely legal, you have the right to do so, it says in the TRIPS, it says in your national law, but every time a country tries to use it, the pharmaceutical industry and even the governments, like the United States, will come down and put a lot of pressure on you.

[Yoke Ling \[00:14:05\]](#) Now, doing this waiver debate in the last 20 months, you had the EU suddenly saying, "well, you don't really need a waiver, which is a temporary suspension, because you can use a compulsory license which is in the TRIPS agreement already". So they were encouraging us to use that. So what is the meaning of that? Let's all just use it without having to be in fear, you know, worrying about backlash because the EU and this decision says use compulsory license, is your right under the TRIPS agreement. The only thing of course is that the TRIPS Agreement does not limit what you use a compulsory license for. It can be for all products and they don't tell you how long your compulsory license can be. It can be up to the whole period until the patent ends, which could be another ten years or fifteen years. It is our right. And when you can use a compulsory license, it's up to you to decide in your law, not necessarily only in the pandemic or global emergency. It could be because you have a hundred patients who need a very special drug and you can't get it because it's too expensive and there is a patent monopoly so you can apply for compulsory license. So what this agreement does is it says you can use a compulsory license for COVID-19, but only for vaccines because the United States only supported vaccines and not supporting a waiver for therapeutics and diagnostics. The EU didn't really want anything at all. In the end, they agreed to only vaccines and the limit of this whole decision is five years. That is a limitation. If I were to use an ordinary compulsory license, I can issue it for ten years or whatever the remaining period of the monopoly is. So here it limits it to five years. So these are some of the limitations. But we must remember we can still use compulsory license for other things. And, finally, the only thing, the only thing that we can call a real waiver, a suspension, is a part of the TRIPS agreement that is a restriction, all right? It says in the TRIPS agreement that if I am a company and I have a compulsory license to manufacture a vaccine or any medicine or diagnostic,

any product, I can manufacture, but most of what I manufacture under this compulsory license can only be used mostly in my own country. I can export some of it, but most of it must be used in my own country. Now, this was recognised in 2001 and 2002 and 2003 as a very, very negative provision in the original TRIPS Agreement. Why? Because if other countries do not have the ability to manufacture, they have to keep importing, right? And if I can actually manufacture, let's say I'm India, I have a compulsory license, I have the ability to manufacture a lot of products and huge amounts. I should be able to export to African countries or other Asian countries which do not have the ability to manufacture. But this restriction of the TRIPS agreement says that whatever I manufacture under a compulsory license in India, most of it has to be used domestically. I can only export some of it. Now, so what the waiver has done is actually suspend that limitation because in the TRIPS agreement that was long like I said recognised as a problem. And so in 2003 and it went on for a few years, there was finally an amendment to the TRIPS agreement that you can actually export more than you use locally if you manufacture under a compulsory license. But the rules and conditions were so complicated that it's only been used in the last ten, fifteen years only once. So the TRIPS decision for COVID-19 suspends all those, you know, conditions, that whole part of that section. And so now if I can actually manufacture, I can actually, under a compulsory license, export even 100% of what I manufacture, but only for COVID-19 vaccines under this decision and for only five years. However, there is a footnote that says that eligible developing country members of the WTO are encouraged not to use the waiver.

**Ranja Sengupta [00:17:49]** That explains very simply what we got, so we would not really call it a waiver. We got slightly more flexibilities to use compulsory license as a policy tool, but which we already have under the TRIPS Agreement. But it kind of waives some conditions but for diagnostics and therapeutics we do not have any tool for that yet because even this compulsory license tool doesn't cover those, right?

**Yoke Ling [00:18:14]** There's nothing to stop a country from issuing a compulsory license to make all these vaccines, therapeutics, if you have the ability to make it, right? You can use a compulsory license so you could do that. But most countries in the developing world, in the South, we don't have the capacity to make those products. So what we will have to rely on some countries to get a compulsory license and then export to us. But because of that restriction that you can only manufacture for yourself mostly and export some of it, or you can export more, but under very difficult conditions in the existing TRIPS Agreement, as a result of that, this decision does waive or suspend that restriction and all those conditions. So it's only compulsory license in that situation where there's not more flexibility. Otherwise we can all use the license any time we want.

**Yoke Ling [00:19:00]** Listeners who have been involved in fighting for human rights or women's rights in the UN, fighting for agreements that ended up as the Convention on the Elimination of All Forms of Discrimination Against Women, the CEDAW Treaty, right? Now you go to the WTO and it's always been a very different creature, although it claims to be a part of the UN system. It has its own rules, its lack of transparency, its lack of participation has been a problem. And one of the most controversial practices of the WTO is what we call the "Green Room". There is a so-called green room, because the first director-general (DG) of the WTO back in the day, he had a room which was painted green. So when developing countries resist or some of those countries resist, the director-general and the OECD countries will pick and choose all those who are very strongly opposing from

the South, put them into the DG's room and then have what they call "closed doors negotiations", basically trying to persuade the developing countries to go with the rich country agenda. I am putting it in the best simplistic way, but that is the reality. And then you select those who are vocal basically to neutralise them. So, in MC12, the waiver became a lightning rod of, really, the sincerity of the WTO to deal with the crisis of the pandemic. The developed countries always want to move controversial negotiations on different issues, bring them together into one package, and then have the whole package adopted at the Ministerial when it is the highest decision-making body of the WTO. So by pulling them all together, they created this "Oh, we have to do it", "take it or leave it" for the whole package. We saw that the return of tactics of manipulation. Negotiators from developing countries from the Least Developed Countries, from the African Group saying that they were basically told by the DG of WTO: "Just don't protest. Do you want to be responsible for the disaster of not having anything come out?". So we took the position that a deal is not worth it. Because there was so much controversy. Nobody knew what was the real document, leaked documents, you know? About what was going on behind the scenes. The Director-General and the Secretariat they came up with very horrible versions that was really 90% in favour of pharmaceutical industry and the rich countries. There was so much watching and exposing by civil society that, in the end, what we got is a far less horrible version than what the DG herself had put on the table. So I would say we did 99% damage control, but the battle is not over independent of the TRIPS decision. We have flexibilities and tools in the TRIPS Agreement as it stands and in our national law, for example, on compulsory license. Let's use that, let's make sure that the EU and all those opposing countries do not be hypocritical and put pressure on us when we use those flexibilities that they told us now to use.

[Yoke Ling \[00:21:36\]](#) The United States kept very quiet throughout the last ten months when Biden came into power and everybody was so excited because, you know, after the Trump administration, which just said: "No, no, no, no, no". The Biden administration said: "Yes, we will accept a waiver of all the different types of intellectual property, not just patents, but only for vaccines". Right? After that, they get very quiet. Then you had the UK dancing with the EU, you know? One would put up a horrible position, the other one would support. So they were very coordinated, the developed countries. They may have their own competition, their own issues, but when it comes to not wanting the South to gain some things that they see as detrimental to their corporate interests, they will work together.

[Ranja Sengupta \[00:22:14\]](#) You already pointed to how developed countries really used multiple strategies to kind of block the TRIPS waiver. They will hijack the narrative. We've seen it around agriculture and food security, too. Right from the pandemic days, they keep saying that, you know, more market liberalisation and more trade is the only answer. "Do not produce your own food. Do not produce your own products, let us sell it to you". And then if proposals, you know, progressive proposals come from developing countries, like the TRIPS waiver, then they would block it. I mean, block it as much as possible. But, on the other hand, when they know that they can use an opportunity and they have used the pandemic, they have used the food crisis that we see currently to push their liberalisation agenda. And then they are very proactive. They are always the first movers. They'll table a proposal so fast. Developing countries will then be kind of just reacting and responding to it. So I just want to ask, what is ahead of us now? What is ahead for our governments in developing countries? What do they need to specifically do whatever they got from this non-waiver decision? How do they use it? And also, you know, we know negotiations are coming up in

six months on diagnostics and therapeutics. How important are those? And, you know, what would be some of the lessons from you in going forward and also work for us as civil society to do.

[Yoke Ling \[00:23:37\]](#) Right! What we are going through now is probably more like a bit of a calm before the next storm, you know, as far as COVID-19 is concerned. There is a lot of political announcements by many governments, North, South, East, West, that we are now in the endemic phase, right? In other words, it's like a common cold, more or less, you know? But let's not underestimate this virus. Look at the medical literature and the scientific literature. You have a lot of warning signs there and also a lot of people who, out of the numbers, who may get COVID-19 infection from the variations, the mutations. A lot people are still getting sick and out of them, many more getting sick, there is always going to be that population in all our countries who are going to be high risk, which means that they will get more sick than anybody else, and you still have people going to hospitals. Talk to the frontliners in any one of our countries and they will say: "look, it is not over" and people who get sick need treatment. So we still don't have really effective treatment drugs. There are a few. Again, the same companies, you know, the Pfizers, they are repurposing some drugs, they make a tweak here and there, they get another twenty year patent on this repurposed drug. So we have the same fights going on for therapeutics, right? And, also, don't forget, many people have what we call long COVID. So, you know, something like more than 60% of cases of different stages of severe COVID-19 will end up with long COVID-19. Sometimes it will be physical, it can be also psychological, fatigue. And for many of the people who have long COVID-19, they will perhaps need treatment also. Therapeutics, therefore, is very, very important. It will be a big fight because the EU clearly does not want to have therapeutics and vaccines, the United States does not want to have therapeutics and diagnostics. The fight will be very intense, so we cannot be any less vigilant. Meanwhile, the vaccine battle will continue too because two vaccination doses, the booster, the second booster, are not so effective for the new variations. So you need what we call follow-on vaccines. So the demand will still be there. And don't forget, huge chunks of the world, especially in the South, are still not vaccinated. So the demand is not going to be less, it's still there.

[Yoke Ling \[00:25:35\]](#) So we need to actually do two things. One, let's not be intimidated into not using the existing rights, flexibilities and tools that already are in the TRIPS Agreement. We have to be confident about using it, so we have to go back and work with all our governments and we have to work also to make sure that pressure does not come in from Big Pharma and from the rich countries and governments when we use those existing flexibilities. And, secondly, very important, that one waiver that exists in the decision means that countries with manufacturing capacity, like India, or Egypt, or even Malaysia, where I come from, where we have actually potential manufacturing capacity, we have to take advantage of this and export to the countries that need it. Right now, there is no restriction on exporting as much as you produce, so that's important. So I think we have a lot of work ahead because if we say this is horrible and then we walk away, then we are surrendering to those who opposed it. And remember, the pharmaceutical industry doesn't even like whatever is left of the so-called waiver proposal. For them, this is like the beginning of chipping away at this untouchable thing called intellectual property where nobody's supposed to touch it. It is their right. No. The right is not the right of a property holder, a pharmaceutical company or even a research institution. The right is the right of human beings to health, to equal access. And women are so far behind and the populations who are disabled, they are so far behind. We saw how COVID-19 left behind huge numbers of people, and we cannot let that happen.



**Ranja Sengupta [00:27:00]** I really like that: the beginning of chipping away at the rights of big pharmaceutical companies. And I do hope that is the case. Thanks, Yoke Ling. Thanks a lot for reminding us that the pandemic is really not over and a lot of work lies ahead for all of us, both for our governments, developing country governments, as well as global civil society. We want to ensure access to vaccines, access to therapeutics and test kits. Also, as you reminded us, we need to make use of whatever little gain we made here. And I think intellectual property rights have, for decades, posed massive barriers to access to medicines and we need to challenge it. So it's just as pharma companies say, it's the beginning actually of that battle. And that a lot of work also lies ahead to ensure that these inequalities in access for women, for indigenous groups, for rural populations. They have much less access and these kinds of situation, when you have control, monopoly control over vaccines, diagnostics, and treatment tools, that inequality is much further aggravated and that's what we do not want. We do have a responsibility to fight against that. So thank you very, very much for that great and very simple explanation of what we got at MC12, what the demand was for the waiver and how we can use it and what lies ahead. Thanks again. And let me then end this conversation today. We will follow up, of course, with more podcasts to kind of keep this conversation going.

**Vanita Mukherjee [00:28:37]** The Feminist for a People's Vaccine podcast is produced by DAWN - Development Alternatives with Women for a New Era and TWN - the Third World Network. Today's episode was edited by Alice Furtado and engineered by Ernesto Sena. Thank you for joining us today. I'm Vanita Nayak Mukherjee. See you on the next episode.