



**FEMINISTS  
FOR A PEOPLE'S  
VACCINE**

## FEMINISTS 4 A PEOPLE'S VACCINE PODCAST EP14 Transcript



### Two UN Special Rapporteurs meet: The right to health mandate on the table

*With Chee Yoke Ling, Tlaleng Mofokeng, Anand Grover and Vanita Nayak Mukherjee.*

**Vanita Mukherjee [00:00:04]** 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.

**Chee Yoke Ling [00:00:36]** I'm Chee Yoke Ling, Executive Director of Third World Network, and I'm really pleased today that we have with us for this podcast two amazing people. First, we have Dr Anand Grover, who is a renowned human rights lawyer who has been practising at the Supreme Court of India for many years, taking on a range of human rights cases and also taking on one of the biggest pharmaceutical companies Novartis all the way to the Supreme Court in defence of the right to health. Dr. Anand is also the founder, director of Lawyers Collective, a public interest law entity in India, and from 2008 to 2014, he was a UN Special Rapporteur on the Right to Health and currently a member of the Global Commission on Drug Policy and back in practice as I understand. And, of course, we have also Dr. Tlaleng Mofokeng from South Africa, who is our current Special Rapporteur on the Right to Health, and she is a hands on physician, an activist for universal health care and women's sexual and reproductive rights, and was appointed as the Special Rapporteur for Health in the midst of the COVID-19 pandemic. And we are very, very happy to have these two amazing human rights activists with us today.

**Chee Yoke Ling [00:01:51]** So just to kick off, and I would like to say to Dr. Tlaleng, as a physician and a human rights activist, how do you use the intersection of justice, rights and non-discrimination in advocating for access to vaccines, diagnostics and therapeutics, especially during the pandemic?

**Tlaleng Mofokeng [00:02:09]** Thank you so much for having this conversation at such an important time. Coming in as a Special Rapporteur during the COVID-19 pandemic, it made even the usual methods of work as a Special Rapporteur quite difficult to fulfil because of the widespread travel restrictions and that really was one of the first ways, I suppose, that one got to really see how inequity was going to be impacted by the lack of, for example, cargo and commodities and health care supplies to be swiftly moved around the world. And that impact of the travel regulations and the lockdowns, they impacted, for example, the African continent first, because even before we realised the magnitude of the pandemic on the African continent, we already had, for example, other commodities and supplies in terms of contraception, generic medicines, condoms, for example, they could no longer be imported. So, even the reliance of different regions of the world on importing key medical supplies and essential medicines became very apparent early on. And so it was important and I think it didn't have a choice but to really think about all of those different issues of marginalisation. Because to get really to a point of justice, you have to understand who is getting impacted and why. For me, working in a health care facility, it was very apparent how all of these issues are interacting. The COVID-19 pandemic was emerging, it was dynamic, we didn't quite understand what we were dealing with, but we had other health care needs on the ground, which were then suffering as a result of resources being shifted around to meet the needs of the COVID-19 pandemic. So those were the initial experiences early on in the pandemic.

**Chee Yoke Ling [00:03:49]** This I really need to ask you, because your latest report in 2022 was on racism and the right to health. So would this be a combination of those experiences for you to dive into the racism aspect? Because that was really important. So maybe a little bit of your views on that report.

**Tlaleng Mofokeng [00:04:02]** That particular report on racism and the right to health for me was important to put to the General Assembly. Because all of us have heard how in the pandemic, early on in the messaging, we were told that people with hypertension, with cardiovascular disease, with metabolic diseases would be worst impacted. And when you look at the black populations, people of African descent, who are experiencing racism, you have chronic diseases, asthma, hypertension, cardiovascular disease. And they were impacted even worse by the pandemic. Also because structurally where they are placed in society, we still have segregation. So not only were they physiologically more at risk, at worst impacted, but they also couldn't physically get access to care because of segregation. And so that's important for me to elevate the issue that it's not the individual characteristics or genetic predisposition of particular people on this planet. It's that, for some of us, racism is a real determinant of health and, in the context of COVID-19, we needed to really understand it as a structural issue that permeates all levels of society. And therefore, when we think about the future we want to create, as we think about this "post-COVID" world in inverted commas, what does it mean then, for people who are already living under the crushing weight of prejudice, such as racism? And so the future solutions we bring must have that in mind.

**Chee Yoke Ling [00:05:21]** At this point, I'd like to turn to Dr. Anand Grover. Could you tell us your experience in your role when you were a Special Rapporteur? What did you have to say about the experience of having to take on the intellectual property regime as a structural obstacle to health?

**Anand Grover [00:05:34]** Thank you very much. It's a pleasure to be with Tlaleng and yourself Yoke Ling. It's a good conversation to have. We must appreciate the treatment in terms of health for people: 50% of the expenses are on account of diagnostics, therapeutics and vaccines, what we call drugs in common parlance. Now, the price of drugs and vaccines and therapeutics are actually contributed largely because of intellectual property rights. And intellectual property, by the very nature of structure of laws, is geared to allow those who have it to get even more and more in terms of intellectual property rights and, therefore, more and more money. So, pharmaceutical companies are totally unaccountable and, in fact, the US and Europe actually fund them. In COVID-19, not a cent of penny was spent on innovation for mRNA technology, for COVID-19 vaccines, but they made in trillions and, in contrast, though enough vaccines were available large swathes of populations in Latin America, Africa and Asia did not get them. So this I won't call it inequity. It's discrimination in law. So this was the challenge for me, how to bring, in the core of the right to health, a rights-based approach. I think it's very important to make sure that we tell the world, as UN Special Rapporteurs, as well as civil society, that pharmaceutical companies are making not only exorbitant profits, but what I call criminal profits, where people are dying because they are making so much money and the prices of vaccine, drugs, etc are so high.

**Chee Yoke Ling [00:07:15]** Thank you so much, Dr. Grover. I think you really have pinpointed the motivation of what has distorted intellectual property rights. On that point, I think both of you talked about the human rights-based approach to health. This is a wealth of concepts and principles that should be translated into norms. And, on that, the Human Rights Council is negotiating a legally binding treaty on human rights and business. And also we have in the WHO negotiations going on on a new pandemic instrument, it could be a treaty, a convention, it has to be decided. At the same time, there's also the International Health Regulations that are being amended to really fill the gaps from the experience of COVID-19. So maybe I'd like to hear your thoughts, Dr. Tlaleng, how you are looking at these three strands of what would be very important for us in a human rights-based approach to health.

**Tlaleng Mofokeng [00:08:04]** I think it's important to also recognise the incredible work that the mandate has done consistently on the matter of equity across the board. The work I do is actually possible in the way that I do it, bringing an anti-racist, anti-coloniality analysis to it, because of the groundwork that I find already in the mandate. And I think it's important as we look forward and look ahead or what is required is to also be honest about why the human rights system, the international multilateral system didn't work the way that we needed it to work when we needed it most. We need to ask another question of why are member States unable to hold each other accountable as peers? Because we come in as experts and we bring what I think is incredible analysis and insights and recommendations. And those are not usually taken up in the way that they should be and we've seen when recommendations get ignored about strengthening of health systems, about taking care of the health workforce, what happens? But the question is: then what? Now that the multilateral system has clearly failed, what do we need to do now to make sure

when the next challenge comes we are ready? I still believe that human rights are what unites us and not what divides us. And I think the ways in which the mandate and myself always talk about intersectional frameworks as solutions. What it means basically, it's that we need to think of the most marginalised amongst us and put our efforts to make sure that they can thrive, that they live in societies enabling of a life of dignity. Because if you can solve the problem structurally of the most marginalised person, it means the rest of us in the middle will benefit. Because then we are actually not with an UN slogan "leaving no one behind". For me, this is a human rights issue because it's about dignity and what kind of dignity will people have if they don't have access to lifesaving medicines either for pain management, to treat other illnesses and diseases, for palliation, but also for chronic illness such as long COVID-19. So, the idea of centering dignity for me is really, really important because that also requires us to find from each community what dignity looks like for them. If you think about centring dignity, I think then it's easier to see the human, the person, the rights holder and centring them as an important person in the conversation of how we move forward within the human rights framework.

**Chee Yoke Ling [00:10:27]** Yeah, Dr Tlaleng, I wanted to follow up with you, because many of us are having a discussion on how to raise more awareness among feminist groups, women's rights groups, across the board of civil society that we should use the human rights mechanisms and instruments much, much more and also to bring it home to people that it is so real and they have a right to actually shape it and protest against it and hold our governments and institutions and corporations accountable. So I'd love to hear your thoughts on that.

**Tlaleng Mofokeng [00:10:53]** The truth is that for any cause of justice in global health, we know that nothing moves without civil society. That's just the bottom line. And, for me, what continues to be a worry is the shrinking space for civil society in global health institutions who are supposed to be walking the talk, right? And you find that even within those institutions, there is a lack of intention to have meaningful participation and an open door. And so the kinds of strategies we need to embark on and the organisations need to embark on have to involve holding leaders accountable. And the idea of accountability is quite hard in human rights because, on the one hand, you've got these very key important human rights institutions, global health institutions of governance and normative standards and research, which we need to be working in collaboration with. But on the other hand, they are the people who are also letting us down. And so how do you hold them accountable and in the same way still work and mobilise with them? And I think it's possible. We don't have to choose. I think holding each other accountable should be part of feminism and what is expected of all of us. The other issue for me is that we need to be really intentional about cross movement mobilisation. I'll give you an example. The issue of how COVID-19 impacted sex workers, not only just as citizens, but also as people who work outdoors, as people who have exposure to many individuals throughout the day, as people who needed to know particular information and guidance. Is COVID-19 sexually transmitted, for example? We had none of that health communication and then you have another element. Because of criminalisation, sex work and sex workers are not recognised as legitimate workers and people who need to be receiving the social support and the grants that many governments were providing their citizens. So they were cut off at every single level, even in the response of governments to COVID-19, the so-called "Let's help citizens cope better". They were still excluded because of criminalisation. The other example is one of abortion access, right? We know that in many countries around the world,

abortion access even where it's legal, like in South Africa, access still remains a challenge. And so when you then had the immediate emergency response of COVID-19 with resources in terms of literal expenditure and budgets, but also the human resources in terms of health care workers, were shifted to COVID-related responses, which were valid. It left a gap where you then found, for example, abortion clinics, clinics for family planning, adolescent health-related clinics, we're not having a gap, we're... health workers, resources, commodities were not there for those people. And there's that unmet need that's continuing around sexual and reproductive health and rights. And so we need to be advocating, for example, to access to medicines around COVID-19, but we need to extend that to start asking questions about why is there no research and development around such reproductive health rights, modern contraception methods that are accessible on the African continent, for example, right? Why are the Africa continent still importing every single condoms it requires? Those are important discussions as well.

**Chee Yoke Ling [00:14:00]** I think, in a way, it's not just about COVID-19. COVID-19 really just exposed, as you were saying, and I think we all are realising that more and more how dependent we are on importing the most basic medical products. So what is your thought about the whole idea of global public good and to think about building capacity for manufacturing, etc, R&D, that looks to us global public good and not monopolistic private property.

**Tlaleng Mofokeng [00:14:23]** It's so important that business does not get absorbed, right, from human rights. In fact, the UN Working Group on Business and Human Rights have produced really important work during COVID-19, but even before. And the UN itself has a guiding document on business and human rights and the responsibilities of business. And it's quite sad, right, when you think about how profiteering and profit making was more important than saving human lives by the very companies who were already making so many profits that even during the pandemic, right?

**Chee Yoke Ling [00:14:54]** Yeah, absolutely.

**Tlaleng Mofokeng [00:14:56]** They make so much, so much profit that they don't even need to go into producing these vaccines anymore. And that's just mind blowing that you have the State, right, which has particular obligations under the right to health. But the right to health also has very specific obligations that speak to non-State actors and pharmaceutical industry business is a key component of that. And the ways in which the whole world was making a moral plea, right, for vaccines to be distributed equitably. For me it was very odd. Looking at global leaders who are using a moral plea, instead of using human rights to have these conversations. We have an entire framework of how to deal with pandemics. We have entire human rights,...

**Chee Yoke Ling [00:15:38]** Absolutely.

**Tlaleng Mofokeng [00:15:40]** ... recommendations on how to deal with this. It has to go beyond just "please be nice and think of the global South". And so how then we move forward thinking about the fact that a lot of this research and development, by the way, is funded by taxpayers money, right? And a lot of the research institutions are attached to academic institutions, which are funded and supported by governments. So this idea that pharmaceutical companies out of their

own will, went and discovered this amazing vaccine and they own it because they discovered it, it's also false. A lot of the money and the resources, intellectual resources, as well as literal dollars, that went into the production actually is supported by taxpayers money. And so the people's voice is what was missing in this conversation.

**Chee Yoke Ling [00:16:28]** Thank you so much for that and many things for us to come back to. So, Dr Anand Grover, we were are just having this conversation about the need to move towards human rights-based approach, but really the production of all these products and medical needs, that it should be much more moving towards the global public good or the whole cause of public good. So what do you have to say about a call to have global public good and changing the whole landscape of how we produce medicines and do R&D?

**Anand Grover [00:16:53]** In order to get there, we must analyse what is wrong. What has gone wrong in the pandemic actually indicates the structural falls within the system. The structural faults are basically: first, according to me, the whole of the UN system apart from Special rapporteurs maybe is now, to use the words very carefully, is a hostage to private enterprise. The money that is coming in from private nonprofits, I don't want to name them, that is not the idea, actually determines what is happening. Therefore, COVID-19 has shown us that it is not the UN which is in control of things. The first world countries are actually doing the work of pharmaceutical companies. The governments which control the UN in terms of resources, they are actually the agents of pharmaceutical companies. So that is what is wrong with the system as it is today. So what do we have to do? First, if you are really serious about business and human rights, you have to have a mandatory obligation with States and businesses. That hasn't happened. Unless you change that, the UN system will not be able to deliver and they will go on as they are. And things are very serious now. The COVID-19 pandemic has shown what abject failure we have seen in the system of delivering healthcare services, diagnostic and therapeutics to the vast majority of the people in the world. It is a complete failure. But if you look at Brazil, the US, Africa, India etc, it's a failure. I mean, India, we succeeded to some extent, but there was a major problem in India too. Secondly, intellectual property rights have to change. You cannot go on the same system for people who don't do any innovation being rewarded and in multiple times. But I think we have a major problem because out of the pandemic, the people who are very strong are the pharmaceutical companies who are backed by the so-called first world nations, the developed nations. And unless we change that structure, we are not going to change much.

**Chee Yoke Ling [00:18:58]** Thank you so much to both of you. Maybe as a last wrap up for this round of conversation. So I will start with you, Grover. What would be your closing remarks to those who are listening to this program?

**Anand Grover [00:19:11]** Well, I think we are going through troubled times all over the world. There is a swing to the right in Brazil, as we saw it. Fortunately, shifted somewhat. In the US, in India, everywhere, Turkey etc. And with that you had serious repercussions on the right to health. And the most important decision in terms of international ramifications is the Dobbs decision in the United States where abortion is no longer legal. So we are living through very difficult times. We have to fight back on all those issues, but if we fight back on siloes, only on health, only on abortion, we won't succeed. We have to tie up with other issues of human rights, whether they be

detention of people who are supposed to be terrorists, which they are not. I have to do so many of those cases nowadays, people who are dissenters... They are actually in the same position as people who are working on the right to health. People who are today talking about the right to health and challenging governments, they are being detained around the world. So we have to now forge linkages with other human rights organisations and we cannot treat the right to health as a silo because people suffer for that. And I think we should be in the broader movement of rights. Of course we do work on the right to health, but understand that they are part of, a parcel of all human rights. Thank you.

**Chee Yoke Ling [00:20:32]** Thank you very much indeed. Dr. Grover. And Dr. Tlaleng Mofokeng?

**Tlaleng Mofokeng [00:20:36]** Yes. I just want to say that human rights are what should be uniting us and not dividing us. And we ought to really demand transparency from all of the global institutions of governance, of health. Because without information, without transparency, civil society, advocacy groups, cannot do their job of holding leaders accountable. And the lack of information and the lack of transparency, as we've seen with COVID-19 and how the militarisation of the COVID-19 lockdown rules were enforced, the ways in which police were used in the public health emergency leaves very worrying and lingering concerns. And without transparency, without information, there will be no accountability. And one of the key human rights principles is around accountability. And so all of us have to protect the shrinking civil space and demand that civil society is on the table and that they have a direct and an important voice to bring to a lot of these global initiatives. And once again, I think we need to take a pause and really ask ourselves truly. Can just making moral pleas and asking people to be nice in the context of global pandemics or human rights issues is what's going to get us where we need to? We have to utilise human rights. It's a language of obligations, but is such that it protects rights holders and it's the rights holders that all of us have to have at the centre of all of our efforts.

**Chee Yoke Ling [00:22:03]** Thank you so much and I really, really totally agree with you when you said making the moral pleas which fell on deaf ears and the response was more arrogance. And I think that really is a reminder that the only way forward is the human rights basis. So thank you so much to both, Dr Tlaleng Mofokeng and Dr Anand Grover for your time, sharing your thoughts and a lot of very, very important insights. And we look forward to working with you both and others across the whole human rights system from the local to the global. And thank you so much again and wishing you all the very best.

**Anand Grover [00:22:40]** It's a pleasure to work with you, Yoke Ling, and Dr. Tlaleng, thank you.

**Tlaleng Mofokeng [00:22:45]** Thank you so much, Anand, for all your work in the mandate.

**Vanita Mukherjee [00:22:54]** 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.