

## **SUPPLEMENTAL INFORMATION – Detailed methodology & tables**

**Accompanying paper:** Perehudoff K, Qazilbash H, Figueras de Vries K. “A needle in a haystack? Human rights framing at WTO for access to Covid-19 vaccines” Health & Human Rights Journal 24/2 (2022).

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## **Abstract**

This research assesses how and why human rights framing (i.e. implicit and explicit human rights language) is used by WTO negotiators in debates about intellectual property (IP), know-how, and technology needed to manufacture Covid-19 vaccines (03/2020-06/2022), and how these findings compare with negotiators' human rights framing of these issues in 2001. Sampling 26 WTO members and 2 groups of members, this study analyses the content of 35 unique WTO documents regarding IP and access to medicines, and six key informant interviews with WTO negotiators, a representative of the WTO secretariat, and a non-state actor. In WTO debates about Covid-19 medicines, negotiators scarcely used human rights frames (i.e. "human rights", "right to health"). Supporters used both human rights frames and implicit language (i.e. "equity", "affordability", "solidarity") to garner support for the TRIPS waiver proposal, while opponents and WTO members with undetermined positions on the waiver only used implicit language to advocate for alternative proposals. A comparable number of WTO members used human rights framing in 2001 and in 2020-2022. This study revealed that WTO negotiators use human rights frames to appeal to previously-agreed language about state obligations; for coherence between their domestic values and policy on one hand, and their global policy positions on the other ("intermestic approach"); and to catalyze public support for the waiver proposal beyond the WTO. This mixed-methods design yields a rich, contextual understanding of the reasons behind the use of some human rights terms. These findings elucidate the modern role of human rights language in trade negotiations relevant for public health.

# Methodology

## *Official statements from WTO members*

These included members' communications and their statements captured in the minutes of the TRIPS Council (including Special Sessions), the General Council, and the 12th Ministerial Conference. These communications and statements were collected from WTO's website.

Eligible communications and statements were:

- made either by a single member or group of multiple members,
- published between June to December 2001 and March 13, 2020 to June 22, 2022, and
- related to the management of IP, know-how and/or technology of HIV/AIDS medicines, or Covid-19 medicines or vaccines.

Where there were revised versions of the same document, only the most recent version was included.

Documents were searched using Nvivo to identify explicit or implicit human rights language derived from the normative framework. See Table A1 in the Annex for an overview of the search terms. Explicit human rights language was considered to be the terms: "human rights", "right to health", "right to science", "right to development", "right to life", and "international cooperation OR assistance OR collaboration" in relation to state "obligations OR duties OR responsibilities". Implicit human rights language was defined based on four key concepts related to access to medicines: "affordability", "equity", "international assistance", and "solidarity". Text was excluded that was unrelated to access to medicines, such as pandemic lockdowns. Two authors (HQ and KdV) first confirmed the hits were relevant to access to medicines, then quantified and described the results to research questions 1a-b and 2.

## *Key informant interviews*

Semi-structured interviews were conducted in English with key informants in June and July 2022 through Zoom. Eligible key informants were WTO negotiators, representatives of the WTO secretariat, and non-state actors observing debates, such as representatives of the WTO secretariat and non-State actors. Informants were purposively sampled through the networks of the authors. Eleven key informants were invited to participate.

The interview guide was tailored to the informant being interviewed and aimed to clarify and validate the results of the content analysis, as well as deepen their meaning. Each interview progressed in a similar fashion: after establishing a common understanding of the term 'human rights language', the conversation generally explored informants' opinions about:

1. Whether and how human rights language was used by WTO negotiators in relation to IP and Covid-19 vaccines;
2. Reasons why WTO negotiators used (or did not use) human rights language in this context;
3. Whether or how implicit human rights terms relate to human rights language;
4. Any similarities or differences in the way human rights language was used in relation to Covid-19 vs. the lead-up to the Doha Declaration in 2001.

Interview questions built on and sought to confirm or contest findings from previous interviews.

All interviews were audio recorded (with permission), transcribed and pseudo-anonymised by two authors (KP and KdV). All authors analyzed the transcripts iteratively through close reading and inductive coding to identify and describe themes that answered research question 1c.

**Table A1. Human rights language, their definitions in relation to international human rights law, and search terms used to locate these concepts in official WTO statements and communications.**

Type of human rights language	Key concepts	UN definition in relation to international human rights law	Search terms
Explicit language	Rights / entitlements	Rights and entitlements as outlined by the ICESCR are an equality of opportunity to access a system of health protection and exercise one's freedom to control one's own health. According to the CESCR, access to medicines is an integral right.	'human rights', 'right to health', 'right to science', 'right to development', and 'right to life'.
	State obligations	States have minimum core obligations under the right to health to direct public funding towards research; prevent unreasonably high medicine prices; and to engage in international cooperation for the dissemination of new technologies.	'Obligation', 'duty', 'duties', 'responsibility', 'responsibilities'
Implicit language	Affordability	<p>A responsibility of States to ensure 'economic accessibility' by making health goods, as well as scientific progress and its applications, affordable for all.</p> <p>States are encouraged to disseminate access to research and its applications to allow developing countries and their citizens to access medical products.</p>	'affordability', 'affordable', 'high costs', 'high prices', 'low costs', and 'low prices'
	Equity	A responsibility of States to ensure 'equitable distribution' of health services and goods. Equity is closely linked to the concept of non-discrimination and ensuring that health services and goods are affordable and available to all groups, including those who are socially disadvantaged or marginalized.	'equity', 'equitable'
	International assistance	All States must work individually and 'through international assistance and cooperation, especially economic and technical, towards the full realization of the rights recognized in the Covenant.'	'International assistance' 'international cooperation' 'international collaboration'
	Solidarity	A commitment to unity between peoples, States and international organizations, with the objective of creating an enabling environment for removing the causes of asymmetries and inequities between and within States, and the structural obstacles that generate poverty and inequality worldwide.	'solidarity'

**Table A2. Number of WTO documents included, by member or group of members (not mutually exclusive). \*=group of WTO members.**

	Number of documents from HIV/AIDS (2001)	Number of documents from COVID-19 (2020)	Total number of documents
Supporters			
African Group* <sup>1</sup>	4	9	13
Bangladesh*	1	7	8
Bolivia	3	7	10
Cameroon*	0	3	3
China	2	10	12
Cuba	3	3	6
Dominican Republic	3	2	5
Egypt*	4	7	11
India*	5	11	16
Indonesia*	4	8	12
Kenya*	4	5	9
Least Developed Countries* <sup>1</sup>	2	7	9
Pakistan*	3	9	12
Russian Federation	0	3	3
South Africa*	2	14	16
Sri Lanka*	4	5	9
Tanzania*	2	7	9
United States	4	9	13
Bolivarian Republic of Venezuela*	4	8	12
Zimbabwe*	4	5	9
Opposing Members			
European Union	5	12	17

Switzerland	3	6	9
Undetermined Members			
Brazil	5	8	13
Canada	4	9	13
Chile	2	10	12
Costa Rica	1	4	5
Ecuador	4	7	11
Paraguay	2	3	5

1 There is overlap between States present in the African Group and the Least Developed Countries Group. Tanzania is a member of both groups, while Kenya, Zimbabwe and South Africa are members of the African Group.

## List of documents included

- WTO Communications and Proposals:
  - Developing country group's paper for the special discussion on intellectual property (IP/C/W/296)
  - EU's paper for the special discussion on intellectual property (IP/C/W/280)
  - Examples of IP Issues and Barriers in COVID-19 Pandemic (IP/C/W/670)
  - Questions on IP Challenges Experienced by Members in Relation to COVID-19 (IP/C/W/671)
  - Waiver from Certain Provisions of the TRIPS Agreement for the Prevention, Containment, and Treatment of COVID-19 - Responses to Questions (IP/C/W/672)
  - Response to Questions on IP Challenges Experienced by Members in Relation to COVID-19 in IP/C/W/671 (IP/C/W/673)
  - Enhancing the Role of the WTO in the Global Effort Toward the Production and Distribution of COVID-19 Vaccines and Other Medical Products
  - (WT/GC/230/Rev.2)
  - Supporting the Timely and Efficient Release of Global Goods through Accelerated Implementation of the WTO Trade Facilitation Agreement (G/TFA/W/25/Rev.6)
  - Waiver from Certain Provisions of the TRIPS Agreement for the Prevention, Containment, and Treatment of COVID-19 – Revised (IP/C/W/669/Rev.1)
  - Urgent Trade Policy Responses to the COVID-19 Crisis (WT/GC/231)
  - Draft General Council Declaration on the TRIPS Agreement and Public Health in the Circumstances of the Pandemic (IP/C/W/681)
  - Trade Restrictions that Hamper Equitable Access to Covid-19 Vaccines (WT/GC/W/826)
  - COVID-19 and Beyond: Trade & Health (WT/GC/W/823/Rev.8)
- TRIPS Council Minutes:
  - IP/C/M/30
  - IP/C/M/31
  - IP/C/M/33
  - IP/C/M/95/Add.1
  - IP/C/M/96/Add.1
  - IP/C/M/97/Add.1
  - IP/C/M/98/Add.1
  - IP/C/M/99/Add.1
  - IP/C/M/100
  - IP/C/M/101
  - IP/C/M/103/Add.1
  - IP/C/M/104
- General Council Minutes:
  - WT/GC/M/71
  - WT/GC/M/189
  - WT/GC/M/190
  - WT/GC/M/193



**Table A3. Number of WTO documents in which members use explicit human rights language (i.e. “human rights”, “right to health”, and “right to life”) regarding IP and Covid-19 medicines (March 2020 to June 2022, by member or group of members (not mutually exclusive). \*=group of WTO members.**

	Total # of documents in which the member / group intervened	Number of documents in which the member / group mentioned...		
		“human rights”	“right to health”	“right to life”
Supporters				
African Group* <sup>1</sup>	9	1		
Bangladesh*	7	1		
Bolivia	7	1	1	1
Cameroon*	3	1		
China	10			
Cuba	3	2	2	
Dominican Republic	2			
Egypt*	7	1		
India*	11	1		1
Indonesia*	8	1	1	1
Kenya*	5	1		
Least Developed Countries* <sup>1</sup>	7			
Pakistan*	9	2		
Russian Federation	3			
South Africa*	14	2		
Sri Lanka*	5		1	
Tanzania*	7	1		
United States	9			
Bolivarian Republic of Venezuela*	8	2		
Zimbabwe*	5	1		
Opposing Members				
European Union	12			
Switzerland	6			
Undetermined Members				

Brazil	8			
Canada	9			
Chile	10			
Costa Rica	4			
Ecuador	7			
Paraguay	3		1	

1 There is overlap between States present in the African Group and the Least Developed Countries Group. Tanzania is a member of both groups, while Kenya, Zimbabwe and South Africa are members of the African Group.

**Table A4. Number of WTO documents in which members use implicit human rights language in the Covid-19 pandemic (March 2020 to June 2022), by member or group of members (not mutually exclusive). \***=group of WTO members.

	Total # of documents	Affordability	International assistance (unrelated to state duties)	Equity	Solidarity
Supporters					
African Group* <sup>1</sup>	9	6		4	5
Bangladesh*	7	2		2	1
Bolivia	7	4	2	2	4
Cameroon*	3	2			2
China	10	7	1	4	4
Cuba	3	2	2	2	3
Dominican Republic	2	1		1	1
Egypt*	7	4		2	
India*	11	7	1	4	4
Indonesia*	8	1		2	1
Kenya*	5	2	2	2	3
Least Developed Countries* <sup>1</sup>	7	1		1	1
Pakistan*	9	1		3	1
Russian Federation	3				
South Africa*	14	11	5	12	7
Sri Lanka*	5	4		2	4
Tanzania*	7	3		3	4
United States	9	2		3	
Bolivarian Republic of Venezuela*	8	4	3	2	3
Zimbabwe*	5	4	2	5	2
Opposing Members					
European Union	12	7	2	11	3
Switzerland	6	6	1	7	1
Undetermined Members					
Brazil	8	4		2	

Canada	9	5		4	
Chile	10	4		3	1
Costa Rica	4	1		2	1
Ecuador	7	1		3	1
Paraguay	3			1	

1 There is overlap between States present in the African Group and the Least Developed Countries Group. Tanzania is a member of both groups, while Kenya, Zimbabwe and South Africa are members of the African Group.

**Table A5. Number of WTO members\* using explicit and implicit human rights language in WTO communications (March 2020 to June 2022).**

Date	WTO members using explicit language	WTO members using implicit language	Reference documents
Jul-20	1	12	IP/C/M/95/Add.1
Oct-20	3	19	IP/C/M/96/Add.1
Nov-20	0	8	IP/C/W/670 IP/C/W/671 IP/C/W/672
Jan-20	7	7	IP/C/W/673
Feb-21	1	3	WT/GC/M/189 IP/C/M/97/Add.1
Mar-21	7	26	WT/GC/M/190 IP/C/M/98/Add.1
Apr-21	1	15	WT/GC/230/Rev.2 IP/C/M/99/Add.1
May-21	0	12	G/TFA/W/25/Rev.6 IP/C/W/669/Rev.1
Jun-21	0	2	WT/GC/231 IP/C/M/100 IP/C/W/681
Jul-21	0	3	IP/C/M/101 WT/GC/W/826
Sep-21	11	11	IP/C/W/684
Oct-21	3	30	WT/GC/M/193 IP/C/M/103/Add.1
Feb-22	0	10	WT/GC/W/823/Rev.8

\*Statements made by groups (e.g., LDC and the African Group) are counted only once, except when a statement is made on behalf of another member included in the analysis. For example, Tanzania speaking on behalf of the African Group.

## **Notes on the Figures in the article.**

### **Figure 1. Number of WTO members and groups of members\* using explicit (black) and implicit (grey) human rights language, May 2020 - February 2022.**

No relevant WTO communications were available between March-June 2022.

\*Statements made by groups of members (e.g., LDC and the African Group) are counted only once, except when a statement is made on behalf of another member included in the analysis. For example, Tanzania speaking on behalf of the African Group.

### **Figure 2. WTO members using explicit human rights frames, 2001 vs. 2020-2022.**

Source data is in Table A5.

\* Developing countries include the African Group, the Plurinational State of Bolivia, Brazil, Dominican Republic, Ecuador, India, Indonesia, Pakistan, Paraguay, Sri Lanka, and the Bolivarian Republic of Venezuela.

\*\* Sponsors include the African Group, the Plurinational State of Bolivia, Egypt, India, Indonesia, Kenya, the LDC Group, Pakistan, South Africa, the Bolivarian Republic of Venezuela, and Zimbabwe.