

# HOW THE VACCINE RICH GET RICHER

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## INTRODUCTION

*“There is no doubt that we have a short-term problem that needs to be addressed. I think Moderna and J&J can and must step in.” – Dr. David Kessler, the scientific head of the White House COVID-19 response, referring to gaps in vaccine deliveries to the developing world.<sup>1</sup>*

*“The way [the] vaccine manufacturers are allocating doses across their different contracts is very opaque but it does seem that low-income countries and COVAX are consistently at the end of the queue.” – Jeremy Konyndyk, executive director of the USAID COVID-19 Task Force.<sup>2</sup>*

By the end of September, vaccine manufacturers had delivered close to one billion doses to the United States and European Union, while COVAX, the global initiative to supply developing countries, lagged behind.<sup>3</sup> With slower-than-expected deliveries from pharmaceutical corporations, COVAX had been able ship out just 314 million doses.<sup>4</sup>

**In October, COVAX expected initial deliveries from the 200 million dose contract it signed with Johnson & Johnson to start trickling in, according to records reviewed by Public Citizen.<sup>5</sup> COVAX was expecting four million doses.<sup>6</sup> Even that modest target was not met. That month, after rich countries had already vaccinated most of their population, J&J delivered nearly twelve million contracted doses to the United States and European Union. COVAX received none.<sup>7</sup> COVAX was going to have to keep waiting. The first contracted doses would not arrive until the week of November 15<sup>th</sup>.**

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<sup>1</sup> How to Vaccinate the World Panel. <https://www.youtube.com/watch?v=WgR2KMrNjoc> at 48 minutes

<sup>2</sup> United States Global COVID-19 Response: Actions Taken & Future Needs, <https://appropriations.house.gov/events/hearings/united-states-global-covid-19-response-actions-taken-future-needs> at 32 minutes.

<sup>3</sup> 477 million to US by Sept 31. 476 million to E.U. by Sept 26. <https://data.cdc.gov/Vaccinations/COVID-19-Vaccinations-in-the-United-States-Jurisdiction/unsk-b7fc> and

<https://vaccinetracker.ecdc.europa.eu/public/extensions/COVID-19/vaccine-tracker.html#distribution-tab>

<sup>4</sup> <https://www.who.int/director-general/speeches/detail/speech-for-closed-session---meeting-with-the-ambassadors-and-representatives-to-the-eu-political-and-security-committee>

<sup>5</sup> <https://www.gavi.org/news/document-library/covax-global-supply-forecast> and COVAX, Vaccine Allocation Decision for Round 7 (Sept. 17 2021)

<sup>6</sup> COVAX, Vaccine Allocation Decision for Round 7 (Sept. 17 2021)

<sup>7</sup> This refers to contracted doses. IMF-WB-WHO-WTO Task Force. COVAX and AVAT deliveries tab. (Nov. 11 2021) <https://covid19globaltracker.org/> Because pharmaceutical corporations keep delivery schedules secret, we could not identify detailed information about October contractual deliveries to developing countries in general.

**Table 1: Select J&J October Deliveries for Contracted Doses**

Purchaser	J&J Contracted Dose Delivery
United States <sup>8</sup>	2,674,300
European Union <sup>9</sup>	9,086,050
<b>U.S./E.U. Total</b>	11,760,350
<b>COVAX<sup>10</sup></b>	4,000,000 (expected) 0 (actual)

In this analysis, we review how manufacturers have largely failed to prioritize and support COVAX, using Johnson and Johnson as a case-study. The corporation has struggled to scale-up manufacturing and, at the same time, refused to widely share its technology with other producers.<sup>11</sup> The corporation also has made a series of concerning decisions about deliveries and donations of existing supply.

## A FAILURE TO PRIORITIZE

COVAX negotiated contracts with pharmaceutical corporations with the expectation that the corporations would deliver substantial doses. In May, COVAX announced a “commitment [with J&J] to purchase 200 million doses on behalf of the COVAX Facility, with the goal of them being supplied to Facility participants in 2021.”<sup>12</sup> However, that goal will almost certainly not be met.<sup>13</sup> COVAX now estimates it will get 90 million fewer contractual doses from J&J in 2021.<sup>14</sup>

<sup>8</sup> 25,607,600 delivered by October 31. 22,933,300 delivered by October 1.

<https://data.cdc.gov/Vaccinations/COVID-19-Vaccinations-in-the-United-States-Jurisdiction/uns-k-b7fc>. This is based on CDC delivery data, and so excludes U.S. donations.

<sup>9</sup> <https://vaccinetracker.ecdc.europa.eu/public/extensions/COVID-19/vaccine-tracker.html#distribution-tab>. Week 40 (Oct 3 – 9): 1,325,685; Week 41 (Oct 10 – 16): 1,940,505; Week 42 (Oct 17 – 23): 2,710,320; Week 43 (Oct 24 – 30): 3,109,540.

<sup>10</sup> IMF-WB-WHO-WTO Task Force. COVAX and AVAT deliveries tab. (Nov. 11 2021)

<https://covid19globaltracker.org/>

<sup>11</sup> <https://www.citizen.org/article/letter-urging-jj-to-share-covid-vaccine-technology> and <https://accessibsa.org/indian-civil-society-letter-jj/>. Emergent BioSolutions—a key J&J manufacturing site—has struggled. See, for example, NYTimes, The F.D.A. tells Johnson & Johnson that about 60 million doses made at a troubled plant cannot be used. (June 11 2021)

<https://www.nytimes.com/2021/06/11/us/politics/johnson-covid-vaccine-emergent.html>. List of J&J production facilities: <https://docs.house.gov/meetings/IF/IF02/20210223/111226/HHRG-117-IF02-Wstate-NettlesR-20210223.PDF>

<sup>12</sup> <https://www.gavi.org/news/media-room/gavi-signs-agreement-johnson-johnson-supply-its-covid-19-vaccine-covax>

<sup>13</sup> Our analysis is limited by a lack of transparency. The contract has not been released so the precise J&J obligation is not clear.

<sup>14</sup> <https://www.gavi.org/news/document-library/covax-global-supply-forecast>

“Producers are not prioritizing delivery to the COVAX mechanism,” noted a senior World Health Organization official at a recent press conference.<sup>15</sup> Acknowledging manufacturing scale-up challenges, COVAX even pointed to J&J bilateral orders in a supply document. “While production has now restarted [at a J&J contractor], the manufacturing ramp-up combined with the backlog of orders for other bilateral customers has led to delayed timelines and lower volumes that will be made available to COVAX in 2021.”<sup>16</sup> Other J&J orders have primarily come from the U.S. (100 million), the E.U. (200 million), Canada (38 million), the U.K (30 million), as well as developing countries, including through the African Vaccine Acquisition Trust (220 million), Brazil (38 million), Bolivia (15 million), and South Africa (11 million).<sup>17</sup>

Because pharmaceutical corporations keep delivery schedules secret, we could not identify detailed information about October contractual deliveries to developing countries. It is possible, for example, that October contractual deliveries to low-income countries exceeded deliveries to high-income countries. Nonetheless, COVAX formed a vital part of J&J’s strategy to supply developing countries, making the relative lack of deliveries particularly concerning. “No one is safe from COVID-19 until everyone is protected, and our partnership with [COVAX] is the single greatest step we have taken to ensure our single-shot vaccine is accessible to everyone, everywhere,” said a J&J executive in May.<sup>18</sup>

Notably, J&J has been favorably compared to other manufacturers because its doses have reached low-income countries in higher numbers.<sup>19</sup> But the vast majority of J&J doses that have reached COVAX have come through country-led donations, rather than through purchase agreements from J&J.<sup>20</sup> In other words, COVAX is relying on wealthy countries donating their unwanted supply of J&J vaccines, rather than receiving adequate shipments directly from J&J. For example, the U.S. has donated 34 million J&J doses, mostly to COVAX, and the E.U. recently announced it would aim to donate 100 million doses to COVAX by the end of 2021.<sup>21</sup> Donating vaccines presents its own challenges.

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<sup>15</sup> <https://www.nytimes.com/2021/10/06/world/americas/covax-vaccine-latin-america.html>

<sup>16</sup> <https://www.gavi.org/news/document-library/covax-global-supply-forecast> pg. 6.

<sup>17</sup> J&J also has smaller deals with South Korea, Colombia, Thailand, Chile, Tunisia, New Zealand, Libya, Switzerland, Ukraine. <https://www.unicef.org/supply/covid-19-vaccine-market-dashboard>

<sup>18</sup> <https://www.gavi.org/news/media-room/gavi-signs-agreement-johnson-johnson-supply-its-covid-19-vaccine-covax>

<sup>19</sup> <https://www.nytimes.com/2021/10/09/business/moderna-covid-vaccine.html>

<sup>20</sup> COVAX, Vaccine Allocation Decision for Round 7 (Sept. 17 2021)

<sup>21</sup> Mostly, but not all, through COVAX.

<https://docs.google.com/spreadsheets/d/1tni6RzGTZcsyIZOT210xVAqAk3rsG7ttjafyiV-D7Ik/edit#gid=0> and <https://www.jnj.com/almost-100-million-doses-of-johnson-johnson-covid-19-vaccine-to-be-donated-to-low-income-countries-through-covax>

## CONTROLLING EU DONATIONS AND RESTRICTING SOME DONATIONS TO COVAX

J&J tightly controls donations from the European Union, including restricting some COVAX donations. According to a 2020 contract, if a Member State wants to donate vaccines outside the E.U., J&J controls who gets access.<sup>22</sup> The corporation and Member State must “mutually agree” on the terms and conditions for donations.<sup>23</sup> One of the required conditions is that donation recipients, like COVAX, cannot send the vaccines to upper-middle-income countries. (Because of contractual ambiguity, it is not clear whether the clause restricts donations to upper-middle-income countries in general, or just those sent through international organizations like COVAX.)<sup>24</sup>

Contract number: SANTE/2020/C3047

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worldwide allocation of the COVID Vaccine) and, if so, mutually agree on the appropriate terms and conditions for such donation, including the following:

- (a) donations being made to supranational/international organizations or governments or non-governmental entities (each a “**Donation Recipient**”) mutually agreed by the donating Participating Member State and Contractor, and Contractor, the Donation Recipient and the donating Participating Member State agreeing on the donation recipient country (which shall be a low income country or lower-middle-income country as per the definitions of the World Bank);

Many upper middle-income countries still have extremely low vaccination rates.<sup>25</sup>

**Table 2: Vaccination Coverage of Select Upper Middle-Income Countries (World Bank)<sup>26</sup>**

Country	Population Fully Vaccinated <sup>27</sup>
Botswana	17%
Equatorial Guinea	14%
Gabon	5%
Guatemala	21%

<sup>22</sup> European Commission, Advanced Purchase Agreement with Janssen (J&J), SANTE/2020/C3/047, [https://ec.europa.eu/info/sites/default/files/jj\\_apa\\_202005071550.pdf](https://ec.europa.eu/info/sites/default/files/jj_apa_202005071550.pdf)

<sup>23</sup> European Commission, Advanced Purchase Agreement with Janssen (J&J), SANTE/2020/C3/047, [https://ec.europa.eu/info/sites/default/files/jj\\_apa\\_202005071550.pdf](https://ec.europa.eu/info/sites/default/files/jj_apa_202005071550.pdf)

<sup>24</sup> African Vaccine Acquisition Task Team (AVATT) is an initiative led by international organizations like the African Union Commission, Africa CDC, Afreximbank, the AU Special Envoys for COVID-19, and UNECA that would also likely be subject to this clause. <https://www.worldbank.org/en/news/press-release/2021/06/21/world-bank-and-african-union-team-up-to-support-rapid-vaccination-for-up-to-400-million-people-in-africa>

<sup>25</sup> Retrieved November 22, 2021.

<sup>26</sup> World Bank, Country and Lending Groups, <http://databank.worldbank.org/data/download/site-content/CLASS.xlsx>

<sup>27</sup> Data drawn from <https://ourworldindata.org/covid-vaccinations> on November 22.

<b>Iraq</b>	10%
<b>Libya</b>	8%
<b>Namibia</b>	11%
<b>South Africa</b>	23%

On November 22, the E.U. announced it would donate 100 million J&J doses to COVAX by the end of 2021.<sup>28</sup> It was not immediately clear if the doses would be available to upper middle-income countries. According to the UNICEF database, by that date, only one European Member State had publicly donated J&J doses.<sup>29</sup> The Netherlands—which hosts a critical J&J vaccine manufacturing site—sent 500,000 doses to Indonesia, a lower-middle-income country.<sup>30</sup>

J&J previously said that it does not intend to profit from emergency pandemic use of the vaccine, but that it expects to move into commercial pricing for booster shots by late 2022 or early 2023.<sup>31</sup> The European COVAX restriction, with its narrow carve-out for donations to less profitable markets, seems to suggest that future commercial considerations influenced the emergency pandemic response. To our knowledge, J&J has not publicly commented on this provision. In general, pharmaceutical corporations may find it advantageous to establish a direct procurement relationship and negotiate individually with governments instead of allowing donations from a joint procurement group.

## VACCINATING THE WORLD

Ending the pandemic quickly requires a different approach. The U.S and the E.U. can require J&J to prioritize deliveries to COVAX and other developing country purchasers.<sup>32</sup> To support lagging global production, the U.S. can use the Defense Production Act to require J&J to work with producers around the world.<sup>33</sup> Indian civil society groups have

<sup>28</sup> <https://www.gavi.org/news/media-room/team-europe-vaccine-sharing-almost-100-million-j-j-doses-be-donated-end-2021-first>

<sup>29</sup> <https://www.unicef.org/supply/covid-19-vaccine-market-dashboard>

<sup>30</sup> <https://www.ema.europa.eu/en/news/increased-manufacturing-capacity-covid-19-vaccine-janssen> and <https://en.antaranews.com/news/188725/indonesia-receives-johnson--johnson-vaccines-from-the-netherlands>

<sup>31</sup> <https://www.biopharmadive.com/news/johnson-johnson-vaccine-not-for-profit-price/608477/> and <https://www.jnj.com/johnson-johnson-covid-19-vaccine-authorized-by-u-s-fda-for-emergency-use-first-single-shot-vaccine-in-fight-against-global-pandemic>

<sup>32</sup> <https://www.worldbank.org/en/news/statement/2021/11/09/international-organizations-vaccine-manufacturers-take-stock-of-covid-19-vaccine-rollout-share-views-for-2022> (“The heads of the organizations encouraged all G20 governments to join the effort to meet the vaccination target of 40% by end-2021 by allowing manufacturers to prioritize COVAX and African Vaccine Acquisition Trust (AVAT) contracts; streamlining donations to COVAX and pledging more doses; exploring possibilities for effective vaccine swaps with COVAX and the AVAT; and eliminating export restrictions to vaccines and their inputs.”)

<sup>33</sup> <https://www.healthaffairs.org/doi/10.1377/hblog20210804.101816/full/>

called on the Biden administration to transfer technology.<sup>34</sup> Finally, J&J can publish delivery schedules, and COVAX can publish its contracts.<sup>35</sup>

“Manufacturers have not played their part,” said the head of the World Health Organization.<sup>36</sup> Neither have governments. When European Member States allowed the European Commission to negotiate on their behalf for vaccines, they directed the Commission in negotiations to “promote a Covid-19 vaccine as a global public good.” That was supposed to “include access for low- and middle-income countries to these vaccines in sufficient quantity and at low prices.”<sup>37</sup> The Commission failed then. Together with the U.S. government, it must deliver now.

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<sup>34</sup> <https://accessibsa.org/indian-civil-society-letter-jj/>

<sup>35</sup> <https://www.hrw.org/news/2021/05/06/covax-enhance-transparency-share-intellectual-property#>

<sup>36</sup> <https://twitter.com/gabbystern/status/1456285903803015168>

<sup>37</sup> European Commission, Agreement between the Commission and Participating Member States on procuring COVID-19 vaccines, [https://ec.europa.eu/info/sites/default/files/jj\\_apa\\_202005071550.pdf](https://ec.europa.eu/info/sites/default/files/jj_apa_202005071550.pdf), pg 72. “The Commission will seek to promote related questions with the pharmaceutical industry regarding intellectual property sharing, especially when such IP has been developed with public support, in order to [sic] these objectives.”



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