

Civil Society calls upon Member States to foil Conspiracy by Big Pharma to Undermine South African Patent Reforms

In September 2013, South Africa's Department of Trade and Industry released for public comment a 'Draft National Policy on Intellectual Property'. It proposes changing South Africa's intellectual property laws to include or improve upon a number of health safeguards such as: Introducing rigorous pre-grant examination of patent applications; Introducing pre-grant and post-grant 'patent oppositions'; Strengthening patentability criteria to set a high standard for innovation and limit patent 'evergreening'; Maintaining a 20-year limit on patent terms, and not allowing extensions under any grounds; ; Not allowing for data exclusivity; Adopting easier to use parallel importation and compulsory license mechanisms; and Cautioning against South Africa's acceding to any investment treaty or trade agreement that might undermine use of TRIPS flexibilities.

What the South African government is trying to adopt as its national law is neither unlawful, nor novel. All these provisions are perfectly compatible with the TRIPS agreement and endorsed by the Doha Declaration in 2001. Many country laws incorporate the provisions that are now being proposed in South Africa.

However, recently, South Africa's Minister for Health Dr. Aaron Motsoaledi, was moved to use very strong words to condemn the planned action by multinational pharmaceutical companies to derail the proposed reforms in South Africa. He characterised the elaborate plot as "genocide" and a conspiracy of "satanic magnitude".

Details about the Pharmaceutical Industry's plans were first made public in a story published by the South Africa based Mail and Guardian on 17th January. Further details became available when Knowledge Ecology International (KEI) revealed that they had in their possession a 'leaked' email which detailed the strategy that was to be pursued by the pharmaceutical industry. Piecing together different details of the plan, that are now available, it transpires that the Innovative Pharmaceuticals Association of South Africa (IPASA) – a trade association of multi-national corporations (MNCs) in the pharmaceutical sector in South Africa – and the US-based industry body, PhRMA (the Pharmaceutical Researchers and Manufacturers of America) engaged a consultancy firm to subvert the South African intellectual property law reform process. The leaked email in question was sent to IPASA members on January 10th by Michael Azrak, the Managing Director of Merck Southern and East Africa and Head of IPASA's Intellectual Property Committee. Its recipients read like a 'who's who' of pharma MNCs, including companies such as AstraZeneca, MSD, Bayer, BMS, Boehringer-Ingelheim, Johnson & Johnson, Lilly, Merck, Novartis, Novo Nordisk, Pfizer, Roche, Sanofi and Takeda.

The plan involved a publicity campaign with a budget of \$600,000 to 'mobilize local and overseas voices' to say the proposed changes are a wrong turn for 'Africa's biggest economy'. The intent was to ensure reforms are delayed at least until after elections in South Africa -- expected in early May 2014 --by suggesting that the changes would be 'politically damaging for South Africa's leaders'.

The mail outlines clearly the strategy that was to be followed: "*This mobilisation will occur through an energetic campaign, which will feel like a political campaign*" "*Delay will provide time to develop a third stage of the campaign*". The email clearly shows the support provided by American pharma MNCs (PhRMA) to the S.African MNC lobby (IPASA). Another excerpt reads as follows: "*As we agreed at the last Board meeting in December, we have moved ahead in identifying a high calibre consultancy group to work with us. The group selected is Public Affairs Engagement (PAE)... The final selection was carried out in consultation with PhRMA. The total investment for this 5 month campaign will be circa US\$450K. PhRMA will contribute \$350K & IPASA will contribute \$100K*".

Analysing the contents of the leaked email and other disclosures in the media Prof. Brook Baker of Health GAP says that the entire idea was that the campaign would be run from Washington. Operating under a euphemism such as "Forward South Africa" and ostensibly led by a "respected former government official, business leader or academic," the publicity and intense lobbying campaign would actually be run by the US-based consultancy firm 'Public Affairs Engagement' (PAE), which promises that "any and all research, op-eds, blog posts, and other material" will be reviewed and commented upon by PhRMA.

This is not the first time that the Pharmaceutical Industry has used questionable means to undermine attempts to use the health safeguards in the TRIPS agreement. Member states have an obligation to condemn such tactics in the strongest possible terms and also to take appropriate measures to prevent future influence of the Pharmaceutical Industry on national policy making that seeks to protect public health. We call upon member states to endorse and adopt a resolution to this effect at the Executive Board meeting of the WHO. We provide below a suggested text for the resolution.

DRAFT EXECUTIVE BOARD RESOLUTION

Pharmaceutical Industry Interference in Intellectual Property Policy in South Africa

The 134th meeting of the Executive Board of the WHO,

Recalling the repeated discussions within WHO governing bodies about the importance of access to treatment and the barriers to treatment access associated with monopoly pricing enabled by extreme intellectual property protection regimes;

Expressing solidarity with the South African government and people in their fight against AIDS/HIV and associated TB, as well as an increasing burden of non-communicable disease;

Recalling the global aversion expressed in 2001 regarding the attempt by 39 large pharmaceutical companies to prevent South Africa from exercising the flexibilities provided for in TRIPS, in order to ensure access to treatment for people suffering from AIDS /HIV;

Expressing support for the South African government and people seeking to build a unified health system to provide universal access to medicines against a history of a sharply stratified health care system;

Recognizing the South African Government's Constitutional obligation to take legislative and other measures to realize the right to health care services, including access to medicines;

Shocked by recent disclosures regarding plans by international pharmaceutical manufacturers to mount a public relations campaign against the announced intentions of the South African Government to finalise and adopt a new Intellectual Property policy which would enable South Africa to fully utilise the flexibilities provided for in the TRIPS Agreement;

1. ASSURES South Africa of the full recognition by the Executive Board of the right of the South African Government to consider policy reform without the interference of the international pharmaceutical industry;
2. REQUESTS the Director General:
 - (1) to write to all of the companies addressed in the leaked Merck memo asking them to clarify the position of their companies regarding the propriety of global companies using their financial power to undermine the right of countries to revise their IP legislation to guarantee the right to health and access to treatment, having regard to the burden of disease carried by the people of South Africa and their Constitutional right to health care services;
 - (2) Offers WHO support (technical or otherwise) to South Africa to ensure that the final policy is both compliant with South Africa's obligations under the TRIPS Agreement, and allows the government to take appropriate measures to access the medicines required to meet public health needs, at affordable prices;
3. URGES Member States to
 - (1) Write to the national subsidiaries of the companies addressed in the leaked memo asking them to publicly withdraw their support for this project
4. ENCOURAGES the government of South Africa
 - (1) To finalise and adopt its National Intellectual Property policy as soon as is reasonably possible, inclusive of all necessary public health safeguards.



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