

# CREATIVITY: The Next Generation Solution For Life Saving Medicines In Uganda

The celebration of World Intellectual Property day to day, provides us with an opportunity to reflect on the importance of intellectual property (IP) in the lives of ordinary Ugandans. Indeed flexible intellectual property laws and policies have increasingly become relevant in today's discussions on access to essential commodities which are critical in an economy such as ours.

As this year's theme [Creativity: The Next Generation] suggests, we need to highlight the importance of intellectual property policy, legal and institutional frameworks in ensuring an environment for creativity while at the same time addressing the potential of intellectual property to enhance the quality of the daily lives of the people of Uganda today and the generations to come.

The World Intellectual property day also offers us a chance to reflect on the opportunities provided by Articles 7 and 8 of the World Trade Organization's Trade Related Aspects of Intellectual Property (TRIPS) Agreement. Article 7 of this Agreement provides that the protection and enforcement of intellectual property rights **SHOULD** contribute to the promotion of technological innovation and to the transfer and dissemination of technology in a manner conducive to social and economic welfare. On the other hand, Article 8 gives the countries liberty to adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development while formulating or amending their laws and regulations. This position was also re-affirmed in the 2001 Declaration at Doha that "the TRIPS Agreement **DOES NOT** and **SHOULD NOT** prevent Members from taking measures to protect public health."

For the past 10 years, Uganda has been focussing on aligning its national intellectual Property laws with the TRIPS Agreement. While this Agreement prescribes minimum standards for intellectual property protection for Uganda, it also provides for policy space which Uganda has to maximally utilize and incorporate into its national laws on intellectual property. This approach will ensure that Uganda's frameworks do not only protect the rights of the innovators but also prevents the abuse of intellectual property rights by these rights' holders.

The public health perspective requires that the implementation of intellectual property rules should be governed by those principles which support public health goals and access to medicines. This in turn ensures a rapid and effective response to public health needs and crises including provision for a wide range of pharmaceuticals to meet the basic health needs of the population and ensuring a supply of quality medicines at affordable prices. Although many forms of Intellectual property affect access to medicines, patents have been prominent in the discussions around Intellectual property and access to medicines.

The TRIPS Agreement requires WTO Members to provide protection for a minimum term of 20 years from the filing date of a patent application for any invention including for a pharmaceutical product or process. The patents on pharmaceutical products and processes have been criticized as providing drug companies with monopolies over the production and marketing of medicines which allows them to fix prices at high rates to maximize profits.

As civil society working towards access to medicines, we have questioned the legitimacy of patents on life-saving medicines. In our country for instance, it has been severally reported that there are over 1 million Persons Living with HIV/AIDS with half a million in need of Anti Retro-viral Therapy but only about 50% enrolled. It is critically important that policy makers get a clean understanding of the synergies between the innovation processes in the health sector and the need to ensure access to scientific creativity.

There is a great opportunity in utilizing the policy space that is provided by the TRIPS Agreement. The opportunity for Uganda is **RIGHT NOW** as we develop the Industrial Properties Bill. The present Bill is better than the first draft that had been proposed by the Uganda Law Reform Commission (ULRC) which barely took advantage of the flexibilities provided under the TRIPS Agreement. Even then, the Bill before parliament also needs further work to ensure that it fully takes advantage of the policy space provided by TRIPS Agreement including: recognizing the transitional period; providing for bolar provision; making it easy to get compulsory licensing and voluntary licences and

recognizing parallel importations.

**We are therefore calling upon our legislators, policy makers and fellow citizens to:**

**1. Ensure that Uganda's Industrial Properties Bill;-**

- a) Expressly provides under section 8 (3) that pharmaceutical products are excluded from patent protection until such a date as may be extended in the future;
- b) Section 61(1) of the Industrial Property Bill should be amended to include the possibility of administrative (as opposed to judicial) grants of compulsory licences for private third parties acting on their own behalf and account. The ministry of health should be authorized to issue the compulsory licence in the area of pharmaceuticals;
- c) On re-exportations of pharmaceuticals produced under compulsory licence under the WTO 30 August 2003 Waiver Decision, section 102(8) should not only refer to COMESA, but also to the partner States of the EAC;
- d) Section 60(1) (a) should be amended to include a reference to a maximum period of negotiations with the right holder before granting a compulsory licence;
- e) As regards parallel importations, the reference to "importation into Uganda" of patented products under section 43(2) should be deleted to provide for a rule of international patent exhaustion;
- f) The Bill should introduce a provision enabling Uganda to take advantage of August 30th Decision

**2. Ensure that Uganda's Anti -counterfeit Goods Bill;-**

- a) Places powers of administration of the Bill to Uganda Registration Services Bureau as it is about "counterfeit trademark" and "copyright piracy". It would seem very strange that while IP offices are in charge of the trademark and copyright laws, violations of certain types of rights (which is covered by the 2010 Anti-Counterfeit bill) falls within the authority of non-IP bodies such as Uganda National Bureau of Standards.
- b) Provides for referral of matters relating to the quality, safety and efficacy of medicines and other medical products to the National Drug Authority under the National Drug Policy and Authority Act

**3. Recognize the principle of subsidiary within the EAC framework**

- The principle of subsidiarity which provides that regional laws and policies in East Africa supersede national laws,
- a) Uganda should lead the other partner states in the process of amending contentious regional laws which go beyond the obligations of the TRIPs agreement.
  - b) Special focus should be put on the EAC Anti-counterfeit bill; the Draft EAC Regional Intellectual Property Rights Policy on the utilization of Health Related WTO-TRIPS Flexibilities and Approximation of National Intellectual Property Legislations.
  - c) Uganda should also carefully take note of the East African Community proposed discussions of a regional agreement with the European union, proposed regional common market protocol and the EAC Anti-counterfeit Goods Law that is quite similar to the Kenyan law against counterfeits that was found by the high court to be in violation of the right to health in as far as it defined counterfeits to include generic (copy) versions of brand medicines.

We also call upon our members of the East African Legislative Assembly (EALA) and Ministry of East African Affairs (MEACA) to:

- a) Work with national intellectual property office officials to ensure harmony of national intellectual property laws and policies with the regional laws and policies
- b) Reject intellectual property provisions in trade agreements that jeopardize access to medicine and social welfare needs of Ugandans
- c) Take time to consult stakeholders before assenting to controversial trade deals and laws at the regional level.

Finally as we come to the end of our exemption to implement intellectual property rights by 1st July 2013, **we call upon our government to negotiate for and lobby for a total exemption on Trade Related aspects of Intellectual Property protection implementation until we graduate from being categorized as a Least Developed Country.**



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