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Health GAP • CEHURD (Centre for Health, Human Rights and Development)

Poorest Countries and Civil Society Secure Progress in Extending Freedom from Oppressive Intellectual Property Rights

(Washington, D.C. and Kampala, Uganda) AIDS and human rights activists today applauded the coalition of Least Developed Countries (LDCs) who stood together to win a partial victory at the World Trade Organization that will help extend affordable access to health, education, and climate technologies for the world's most impoverished people.

The US and Europe had pushed these countries to implement the standards of patent protection, copyrights, trademarks, and other forms of intellectual property in the next few years that today's rich countries refused to implement while they were focused on development. But at the WTO's Council for TRIPS (Trade Related Aspects of Intellectual Property Rights) Least Developed Countries pushed back and won an extension of eight years. LDCs also won back policy space to reduce their current levels of intellectual property protection if appropriate in order to develop a viable technological base and to overcome severe and lingering capacity constraints. This same policy space will permit them to access more affordable medicines and medical technologies, educational resources, agricultural inputs, and green and climate control technologies.

The US and Europe, home to powerful intellectual property industries including pharmaceuticals, publishing, movie and recording, information technology and others, used massive backroom pressure to try to force LDCs, the poorest countries in the world, to open their weak economies to monopoly protections for IP-based multinational corporations. They rejected a much more appropriate plan which would have tied implementation of intellectual property rules to successful development beyond "Least Developed" status—a UN designation that signifies the weakest global economies in need of special development efforts, differentiating them from fast-growing middle-income developing countries. According to the Agreement on TRIPS, LDCs have the right to such an extension as long as they make a "duly motivated request."

"The pressure by US and European countries on LDCs was outrageous and hypocritical," said Matthew Kavanagh of Health GAP. "The US government has called for achievement of an AIDS Free Generation and global goals on education and climate—but without access to affordable generic medicines and other technologies in poor countries, this vision cannot be attained."

"In Uganda, the EU emphasizes human rights," said Primah Kwagala, Advocacy Manager of CEHURD. "But their tactics in Geneva show that they conveniently ignored the human right to health when it mattered most." CEHURD and a coalition of civil society organizations in Uganda, an LDC in East Africa, petitioned the East African Legislative Assembly, which passed a resolution in support of the LDCs' efforts. CEHURD also challenged the EU Delegation in Kampala to abandon its efforts to force poor countries to accept a bad deal.

Pressure from US and EU did concede to some compromises, including an extension of only 8 years (though LDCs will be entitled to further extensions in the future). But 8 years is a victory in light of the US's insistence on only a 5 year extension, and the expression of "determination" is modified by a separate sentence entitling LDCs to make "full use of the flexibilities in the TRIPS Agreement to address their needs including to create a sound and viable technological base and to overcome their capacity constraints," which in this case would include the flexibility under Article 66.1 to rollback existing levels of TRIPS

compliance.

“We are glad to see that our governments stood up to pressure, and fought for the right to pro-development policies,” added Kwagala, Policy Advocacy manager for CEHURD. “An extension of 8 years with a possibility of a further extension come 2021 is important. This will position our region to benefit from flexible intellectual property policies to be able to build a viable technology base. It is also opportune timing to focus on building the capacity of our local industries.”

“Countries, including Uganda, now have to use the policy space they have fought for and won,” said Professor Brook Baker of Health GAP. “Virtually all the theoretical and empirical evidence finds that IP impedes, rather than helps, development projects in low income countries. Many LDCs, though, still need to enact IP reforms that allow unrestricted access to essential public goods. They can be selective, but they should not simply maintain the colonial IP systems that they inherited, nor should they follow the siren song of WIPO and other IP fundamentalists who claim that IP is good for you—just close your eyes and swallow.”

In addition, LDCs and their allies will have to begin early to win an even better extension of the pharmaceutical product transition period which will expire in 2016. Here, too, the LDCs should insist on an unconditional extension (like the one they won in 2002) and it should last as long as a WTO member is an LDC. The fight against HIV, tuberculosis and malaria, and the simultaneous fights against neglected tropical diseases and non-communicable diseases, depend on affordable access to generic medicines of assured quality.

“As a region with overwhelming capacity constraints in local pharmaceutical production and 80% of the population depending on generic drugs, this offer to extend the transition time illuminates how much more effort civil society needs to put in asking for an indefinite extension of pharmaceutical product patents come 2016. It is very evident that civil society in the third world has a voice in the global agenda on trade in intellectual property rights,” said Moses Mulumba, Executive Director of CEHURD.