

**9th International Congress
on
AIDS in Asia and the Pacific
ICAAP 1X
Bali, Indonesia
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**Plenary 4
Power dynamics and
AIDs Governance**

The politics of intellectual property rights : people and corporate interests.

some observations

by

Javed Jabbar

**global Vice President, International Union for Conservation of Nature (IUCN)
Pakistan**

**The environment and HIV-AIDS
are symbiotically linked :
what climate change means for
our planet's survival,
HIV-AIDS means for the well-
being of human health.**

**And the disease devastates
ecosystems as much as the human
system.**

Asia and the Pacific :

- where about one billion people are still trapped in abject poverty.**
 - where about 5 million people are living with HIV.**
 - where public health governance for the vast majority is grossly deficient.**

Asia and the Pacific :

– where dramatic improvements on a mass scale in relatively short periods are possible.

Intellectual Property Rights (IPR):

The term “IPR” began to be used widely in the USA only in the late 20th century i.e. only about 20/30 years ago.

Richard Stallman: "IPR... operates as a catch-all to lump together disparate laws which originated separately, evolved differently, cover different activities, have different rules and raise different public policy issues...."

Richard Stallman : “ the term “intellectual property rights” systematically distorts and confuses issues... the use of the term “IPR” is promoted by those who gain from confusion”!

Jonas Salk :

**inventor of the polio
vaccine who refused to
patent it :**

**“It would be like
patenting the sun”.**

IPR patents : **some categories**

- Trade-marks**
- Machines**
- Chemicals**
- Inventions**
- Music**
- Literature**
- Cinema**
- TV content**
- Software**
- Medicines**

Medicines are the only products that make the difference between life and death for a human being: IPR should thus be least applicable to medicines that are H.I.V.-AIDS related , and for other serious diseases.

Applied to life-saving medicines with prevention of access to both product and process, IPR means :

- creation of inherently unjust monopolies**
- blockage of knowledge transfer.**
- manipulated profits for a few.**

The Corporation

The pathological pursuit of profit and power :

Joel Bakan

2005

“Over the last 150 years the corporation has risen from relative obscurity to become the world’s dominant economic institution. Today, corporations govern our lives. They determine what we eat , what we watch , what we wear , where we work , and what we do . We are inescapably surrounded by their culture , iconography , and ideology ..

The Corporation

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"...Increasingly, corporations dictate the decisions of their supposed overseers in government and control domains of society once firmly embedded within the public sphere. The corporation's dramatic rise to dominance is one of the remarkable events of modern history , not least because of the institution's inauspicious beginnings..."

Origins of the pharma industry:

Famous corporate drug companies in the 21st century began in the 19th century. One sold cocaine. Another sold heroin.

Alcohol diluted with water was sold as a cure for colds, congestion and TB.

**(The Body Hunters :
Sonia Shah, 2006 .)**

After thousands of Americans died including infants given opiates , Congress in 1906 passed the Food & Drug Act requiring companies to list ingredients on product labels.

**(The Body Hunters :
Sonia Shah, 2006)**

To be fair :
“bad” corporations have
sometimes done “good
service”.
And not all corporations
are “bad” !

1906-2009 :

In about 100 years , there has been a sea change in medicines , and in public health.

With great gains.

But at some cost.

After excessive profiteering through monopoly patenting , as the result of (or despite ?) several factors i-e WTO, TRIPS , TRIPS +, the Doha Declaration , bold attempts by certain countries , etc a significant decrease in prices of certain drugs has also taken place.

Notable case-studies of advancing the people's interests :

Brazil

India

China

Thailand

Columbia

Yet... even as we meet in Aug-2009 , attempts to provide low-cost , generic drugs for swine flu are being blocked by European & Asian govts : in abiding or shifting alignments with corporate interests.

One more, people face the threat of “corporate power”.

Individual creative / artistic intellectual property rights , poorly enforced – or not at all – eg. rampant piracy .

Corporate intellectual property rights, specially of pharma corporates , strongly enforced.

Even though the new technologies are enhancing people's power, in the people's sector, power is diffused, spontaneous, under-funded, sporadic.

In the pharma sector in particular, power is well-organized, focused, well-resourced, persistent.

As is the State.

A way forward :

**Nobel Prize-winning
economist Joseph Stiglitz's
plan:**

**A multi-billion dollar prize
fund financed by advanced
countries for payments to
scientists who develop
cures or vaccines for
diseases.**

**Highest prizes for cures for diseases that kill millions of people e.g. malaria. After pay-out, right to use the treatment enters the public domain. Anybody, anywhere in the world could manufacture the drug to save lives.....
-(The Independent.)**

**In the context of HIV-AIDS
and health, we need a new
concept of
“ People’s Property Rights ”
(PPR) instead of
“ Intellectual Property Rights ”
(IPR).**

The future :

A dynamic, sustained activism by civil society coalitions led by health professionals supported by media and parts of the State can help ensure that the people's interests (PPR) are safeguarded in the struggle against HIV-AIDS : for a healthier planet, for healthier people.

Appreciate support by :

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- Irma F.L. Doloksaribu**
- I Wayan Agus Lingga M**

Thank you.

IPRs, Public Health and the Pharmaceutical Industry issues in the Post-2005 TRIPS agenda

**Benjamin Coriat * and Luigi Ors
enigo ** Université Paris XIII and
CNRS**

**** University of Brescia and KIT
eS, Bocconi University, Milan
Italy**

Pushing the controversy to the extreme

1) Advent of biotech:

- progresses in molecular biology and their increasing relevance for industrial innovative activities have strained to the limit patent system which was essentially conceived for technologies like mechanical engineering and chemistry.
- stretching the notions of novelty and usefulness
- The development of the biotechnology industry itself is strictly dependent on a highly favourable IPR regime

Pushing the controversy to the extreme

1) Advent of biotech:

–the transformations of the latter have been significantly influenced by the growth of the biopharmaceutical sector.

2) Bayh - Dole

- Commercialization of basic research

(3) TRIPS Agreements ...

- Of which the pharmaceuticals industry is one the main supporters—
has ignited raging controversies which go beyond domestic boundaries and reach the global level.

Main propositions

- There are, indeed, profound trade-offs between the incentives to innovate and ensuring public access to medicines
- The effects of strengthening the patent regime depend (non linearly) on a wide variety of conditions in any given country:

=

Main propositions

institutions (price controls; health systems, in general; basic research..);

- Capabilities and opportunities for innovation;
- size of markets;
- modes of competition;
- the specific nature of patents laws themselves and court interpretations

Costs of patents

- The average increase in price for pharmaceuticals due to patent protection is probably close to 400 percent, with the gap in many cases exceeding 1000 percent of the marginal cost (Baker and Chatani, 2002)

Costs of patents

- Huge welfare losses: The size of the deadweight losses range between 0.1 and 0.5 percent of GDP, approximately equal to the amount that the industry currently claims that it is spending on pharmaceutical research in the United States.
- The deadweight loss may increase even more as costs of research increase (Baker, 2004)

Today : (estimated) half of all patients on ARVs in developing countries depend on Indian generic ARVs

Innovative treatments :

The case of the FDC "Triomune" • A major innovation : the first FDC on the market • More generally : a large spectrum of generic ARVs available before 2005, • Most of them being now pre-qualified by WHO • India and Thailand as «pharmacies of the South» **ADULT JUNIOR BABY Cipla's Fixed-Dose Combination 4T/3TC/NVP**

Questions arising from the case study on the use of TRIPS flexibilities

- Should the future of 3 millions people under ART (to morrow much more !....) be dependant of battle fought on judicial grounds ?
- Need of innovative mechanisms guaranteeing the procurement of drugs, especially the new most innovative and efficient ones (2nd line, and switch to new 1st ones...)

Questions arising from the case study on the use of TRIPS flexibilities

- More than ever creativity is required to put in practice the Doha Statement

“the TRIPS Agreement does not and should not prevent Members from taking measures to protect public health”

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