



18 March 2021

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## **MEMORADUM: FIX THE PATENT LAWS PICKET, 18 MARCH 2021**

The Fix the Patent Laws Campaign (FTPL) represented by the Cancer Alliance, Médecins Sans Frontières (MSF), the People's Health Movement, SECTION27 and the Treatment Action Campaign, has gathered here today to urge the Department of Trade, Industry and Competition to urgently finalise draft amendments to the Patents Act to ensure that the government has the necessary enabling legislation and tools to address all public health issues.

Patents, and other intellectual property instruments, can act as obstacles to accessing lifesaving medicines and other technology because they protect manufacturers from competition, keep prices of medicines high, and contribute to artificial scarcity. This was the case with anti-retroviral therapies (ART) in South Africa in the early 2000s – when hundreds of thousands of people needlessly died because they could not afford the high prices of ART.

We cannot allow the same thing to happen in the COVID-19 pandemic. COVID-19 has spurred a global health crisis that disproportionately affects working-class and poor people. For example, South Africa faced challenges in accessing key chemical reagents for COVID-19 diagnostic testing in 2020 due to proprietary protection on the machines and the reagents. The Swiss pharmaceutical corporation Roche rejected a request from the Netherlands to release the recipe of key chemical reagents needed for

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Website: [www.fixthepatentlaws.org](http://www.fixthepatentlaws.org)

Twitter: [@FixPatentLaw](https://twitter.com/FixPatentLaw)

Fix the Patent Laws is a joint coalition of the Treatment Action Campaign (TAC), Doctors Without Borders (MSF), SECTION27, Cape Mental Health (CMH), Diabetes SA, Epilepsy SA, Health GAP, Marie Stopes South Africa, People's Health Movement (PHM), Rural Health Advocacy Project (RHAP), the Stop Stock Outs Project (SSP), the Schizophrenia and Bipolar Disorders Alliance (SABDA), the South African Depression and Anxiety Group (SADAG), the South African Federation of Mental Health (SAFMH), the South African Non-Communicable Diseases Alliance (SANCD Alliance) and the Cancer Alliance including Advocates for Breast Cancer; amaBele Project Flamingo, Ari's Cancer Foundation, Breast Course 4 Nurses (BCN), Breast Health Foundation (BHF), Cancer Association of South Africa (CANSA), Cancer Heroes, CanSurvive Cancer Support (CanSurvive), Care for Cancer Foundation, Childhood Cancer Foundation of South Africa (CHOC), Gladiators of Hope, Glynnis Gale Foundation UK, Hospice Palliative Care Association (HPCA), Look Good Feel Better (LGFB), Love Your Nuts (LYN), Lymphoedema Association of South Africa (LAOSA), Machi Filotimo Cancer Project, Men's Foundation, National Council Against Smoking, National Oncology Nursing Society of SA (NONSA), People Living With Cancer (PLWC), the Pink Parasol Project, Pink Trees for Pauline (Pink Trees), Pocket Cancer Support, Rainbows and Smiles, Reach for Recovery (R4R), South African Oncology Social Workers' Forum (SAOSWF), South Africa United Against Cancer (SAUAC), The Sunflower Fund (TSF), and Wings of Hope (WoH).

increasing production of diagnostic kits and only released it after facing pressure from the European Commission.

Ideally South Africa should be in a position to rely on its own legislative mechanisms to push for more increased access to essential medical tools in the pandemic. Both globally and here in South Africa we need bold, urgent steps towards prioritising the needs of vulnerable populations above profits and nationalism.

Access to medicines is a critical component of the right to access healthcare services. We stand behind the South African government in its efforts to ensure that low- and middle-income countries are not left behind while wealthy countries secure favourable deals with pharmaceutical companies. FTPL have welcomed and supported South Africa and India's proposal to the World Trade Organisation (WTO) to waive the application of certain provisions of the TRIPS Agreement for the duration of the pandemic in relation to COVID-19 technologies. However, international intellectual property and patent regulation reform should by no means be limited to COVID-19.

We are now calling for consistency with South African-led initiatives on the international stage; we urgently need our domestic legislation to reflect the same political will for intellectual property reform we are seeing at the WTO. The Department of Trade, Industry and Competition must prioritise reform to South Africa's intellectual property regime to ensure equitable access to life-saving medical products now!

Under the current patent system in South Africa, there is no substantive examination of patent applications to ensure that they meet the rigorous criteria for the granting of a patent. This allows pharmaceutical companies to obtain unworthy initial patents and multiple patents on the same medicine thereafter by making small changes, even when such changes are obvious and lack inventiveness. This multiple-patenting strategy, commonly known as 'patent evergreening', results in extending patent monopolies beyond the 20 years required by the WTO trade and intellectual property rules. Furthermore, it blocks the early entry of generic competitors who can expand sources of supply and bring more affordable products to market. Countries like India and Argentina have already taken proactive steps in their legislation to counteract this problem.

South Africa's patent laws also compromise the security of medicines supply in the country. If patent holders are unable, or unwilling, to deliver adequate supplies — as we have witnessed recently with the bans on exports of diagnostics by certain countries — we should be able to increase supply through generic products registered in South Africa, which could increase availability and avoid stock outs. It would also enable local manufacturers to scale up production of much-needed health products, which also advances a key industrial policy objective.

Such abuses of patents continue to restrict access to medicines for millions of our people suffering from TB, cancer, hepatitis and mental health conditions — and will most likely also threaten access to any future COVID-19 related technologies.

South Africa's patent laws have not been changed since the 1970s, despite the lack of competition driving up prices of life-saving medicines. This is inexcusable given that in the interim, South Africa has established a constitutional democracy that places obligations on the state to take necessary legislative and other measures to progressively realise the right to health.

The Intellectual Property Policy, adopted by Cabinet in May 2018, makes important commitments to reform the country's patent laws to prioritise the constitutionally guaranteed right of access to healthcare services. It paves the way for a new, progressive intellectual property regime in South Africa, almost two decades after the signing of the Doha Declaration on Public Health — a critical international agreement confirming countries' right to incorporate pro-public health safeguards in their laws.

Despite Cabinet's adoption of the IP Policy, a Bill giving effect to that Policy has not yet been published for public comment. The FTPL, comprising over 40 organisations working to reform South Africa's patent laws, requests an urgent update on progress regarding the finalisation of the Bill and to urges you to ensure that this law reform is prioritised by the Department.

We call on the South African government to take the following steps to help fight COVID-19:

- Put a temporary moratorium on granting patents on COVID-19 related products as they are proven effective.
- Automatic compulsory licensing of COVID-19 related health products with existing or pending patents.
- Fix the patent laws urgently to ensure the use of all legal flexibilities to improve access to health products.

We further request a meeting to discuss the above matters and look forward to your response by **25 March 2021**.

The pandemic has shown that we need to prioritise public health and access to life-saving medical care now, more than ever.

Ends

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