Technology, Innovation, Solidarity, COVID-19 and Lessons for the AfCFTA: A Brief Outline

By:

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Halting the rapid transmission of COVID-19 and reversing the trend of consequential global distress is a global concern and goal. As the WHO has rightly pointed out, this goal is only achievable when everyone, everywhere can access the health technologies they need for COVID-19 detection, prevention, treatment and response. This highlights the importance of international cooperation and solidarity for restoring global health security, now and for the future.

On Friday 29 May 2020, the World Health Organization (WHO) launched its much-anticipated, Solidarity Call to Action for equitable global access to COVID-19 health technologies through sharing of knowledge, intellectual property and data. As the name suggests, the platform is intended to pool IP rights, data and know-how relating to COVID-19 healthcare products. The Solidarity Call invites key stakeholders and the global community to voluntarily pool knowledge,

intellectual property and data necessary for COVID-19.

Overcoming COVID-19 will require breakthroughs in technological innovation and collaboration. So, it is understandable that launching of the Solidarity Call was viewed by some people as globalizing the fight against the COVID-19 pandemic.

The Solidarity platform calls on holders of knowledge, intellectual property or data to existing or new therapeutics, diagnostics and vaccines to voluntarily license such rights on a non-exclusive and global basis to the Medicines Patent Pool or any other mechanism and/or voluntary non-enforcement of intellectual property rights during the COVID-19 pandemic, in order to facilitate the wide-scale production, distribution, sale and use of such health technologies throughout the world. The actions under the Call are for the period of COVID-19 and thus temporary. But it would seem that not all modalities of collaboration on technological innovation will be aligned with the WHO or global formulae. the pharmaceutical industry is not ready to make any binding commitments and has been clear in expressing disagreement with the WHO's approach and concept of solidarity. While they are willing to contribute to finding an antidote to COVID-19, they are not ready to embrace a formula that requires sharing of technologies, especially intellectual property.

Finding regional technology solutions to regional health problems

What does this mean for countries that do not possess the technologies? UNCTAD has outlined a formula that might work for local production of medical products, but this piece addresses the contribution of the African Continental Free Trade Area (AfCFTA) negotiators.

The response to the Solidarity Call by industry highlights one of the several times Pharma has disagreed with global approaches to technology sharing in the field of access to health products. Disagreements are a part of healthy independence. Can Africa and many other developing countries exercise independence as well?

The starting point for Africa's independence might be phase 2 of negotiations of the AfCFTA. The AfCFTA was created by the African Continental Free Trade

Agreement among 54 of the 55 African Union nations. As of 1 June 2020, there were 30 signatories to the Agreement. The AfCFTA is the largest in the world in terms of the number of participating countries since the formation of the World Trade Organization. This number is too big to be ignored. The main objectives of the AfCFTA are to create a continental market for goods and services, with free movement of people and capital, and pave the way for creating a Customs Union. It will also grow intra-African trade through better harmonization and coordination of trade liberalization across the continent.

Phase 2 of the AfCFTA negotiations cover regulatory trade issues that take place in investment, intellectual property rights, competition policy and probably e-Commerce, with the draft legal text expected in January 2021. This law-making exercise presents an opportunity to craft laws that served the health needs of Africa beyond COVID-19. Understandably, the current global focus is on COVID-19 and finding a vaccine. But other health challenges still remain, including access to health technologies for other diseases like HIV/AIDS, tuberculosis, or neglected tropical diseases which are prevalent in Africa. Whenever COVID-19 ends, the world will probably operate under the mode of regional supply chains. This stresses the importance of finding regional technology solutions to regional health challenges. Negotiators of intellectual property rights in the second phase of the AfCFTA may wish to consider regional needs and be careful not to focus on harmonization of international standards instead.

The WHO calls on governments and other research and development funders to take action to promote innovation, remove barriers, and facilitate open sharing of knowledge, intellectual property and data necessary for COVID-19 detection, prevention, treatment and response, including through national legal and policy measures, and international collaboration on regulatory practices, to ensure availability, affordability and assured-quality of the concerned products. While several African countries may not have capacity to innovate, they can, individually or in collaboration among themselves on the continent, promote innovation. To ensure that innovative capacity is developed on the continent, it is pertinent to promote regional innovation. As a starting point, negotiators of the AfCFTA may consider including in the text appropriate provisions that will allow the collaboration and nurturing of innovative capacity in Africa.

*This is an initial introduction to the author's discussions for the Afronomicslaw Webinar Series III

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