Introduction to Book Review Symposium: Patents, Human Rights, and Access to Medicines (Cambridge University Press, 2022)

By:

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Over a decade ago, I informed one of my professors that, for my doctoral research, I would like to explore the tension between patent rights and access to affordable medicines. The response I received was not encouraging, to say the least. Essentially, I was told that the problem of lack of access to medicines will fade away soon and that pharmaceutical companies were becoming increasingly aware of the need for them to take steps to help developing countries with the problem. Besides, even at that time, a number of scholars had already devoted significant attention to the issue. Needless to say, I was not deterred by any of these. Unsurprisingly, given the nature of the issue, the problem of lack of access to affordable medicines (and now vaccines) remains a persistent and global problem.

For my PhD thesis, I chose to focus my attention on an under-explored aspect of the tension between patent rights and access to medicines i.e. the role of domestic courts in addressing this tension. Doing this entailed using a number of criteria to select the countries I would be focusing on for my research. One, the countries had to be parties to both the TRIPS Agreement and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Two, the right to health had to be a justiciable right in those countries. Three, there had to be some level of local manufacturing capacity to produce generic drugs and thus an ability to use (some of) the flexibilities in the TRIPS Agreement when necessary. I concluded my doctoral research in 2015 and this book is based on my thesis.

In the book, I critically examine the nature of the relationship between patent rights and the right to health under international law. I equally critically evaluate how tribunals and courts in Kenya, South Africa, and India address the tension between patent rights and the right to health. Crucially, the book highlights the strategic role that national courts can play in facilitating access to affordable medicines.

The issue of access to medicines and vaccines is both topical and controversial. It is thus not uncommon for scholars and other actors to have divergent views on how best to foster access to affordable medicines and vaccines. I would therefore like to use this opportunity to clarify certain issues in response to some of my interlocutors. One, while the book recommends that national courts should incorporate a right to health perspective when resolving disputes involving pharmaceutical patent rights, I make it quite clear in the book that this does not imply that patent rights should be abrogated. Two, while the book casts a spotlight on the role of national courts vis-à-vis the problem of lack of access to affordable medicines, it does not necessarily follow that this implies that the author believes that patent rights (or other intellectual property rights) are the only factor responsible for the problem of lack of access to medicines. Of course, there are various factors that impede access to affordable medicines and vaccines. However, one of the key objectives of this book is to highlight the fact that national courts can also play a role in this regard. Three, it follows from two above that the adoption of a human rights perspective in response to the problem of lack of access to medicines, while very important, is not sufficient in and of itself to alleviate the problem and it should therefore not be

seen as a silver bullet. Nevertheless, from a human rights perspective, courts, like other branches of the government, have a responsibility to respect, protect, and fulfil human rights.

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