Beyond Intellectual Property? “Open science” to overcome COVID-19

By:

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October 9, 2020

I would like to start this blog post by congratulating Afronomicslaw.org for creating this original and much needed platform for the dissemination of ideas about the Global South and cooperation between, Africa, Latin America and the world. On July 13, 2020 I had the opportunity to participate in the webinar series III: "*Intellectual Property Rights: Global Rules, Regional and Local Realities.*" In that excellent webinar, I shared four Ideas that I would like to expand further in this article, by building on my previous contribution titled **“**An Exceptional International Intellectual Property Law Solution for COVID-19: Spurring Innovation to Facilitate Access to Affordable Medicines.**”**

Two months have passed since the publication of the above mentioned essay acknowledging the need for equal access to medicines and a Global Public Goods approach, and not a business as usual approach of market exclusivities

and market-driven R&D. The latter approach cannot solve the current crisis, and only exacerbates inequalities in access to medicines in the pursuit of an efficacious vaccine, treatment or technology to stop COVID-19. There is no doubt that solving this pandemic is the most pressing challenge of our time. This is not a zero sum game. Below, I elaborate on the four points for effective global solidarity to tackle the pandemic.

First, global solidarity in practice entails deploying knowledge-sharing schemes to deal with COVID-19. In order to improve efficiency, accelerate scientific progress and ensure global timeliness and equal global access, all countries should commit to sharing knowledge, intellectual property (IP) and data to ensure that any resulting medical tool is globally available and affordable. This is of particular importance in developing and least developed countries, so that IP rights do not become a barrier to access and quick innovation.

The international community must guarantee equal global access to a covid-19 vaccine. Whether a person can access tests, treatment and a vaccine for COVID-19 should not be determined by where they live. To end the pandemic, health systems need to vaccinate 50 to 75% of the global population. Latin America and the Caribbean, Africa and other countries in the Global South should develop domestic manufacturing capacities, since local infrastructure is key to solving this pandemic, and preparing for future ones. This requires building manufacturing and effective distribution capacity, with the aim of making a new vaccine affordable, transiting towards greater autonomy and cognitive independence while fostering local and regional innovation strategies in a co-ordinated way between Global South countries.

Second, all SARS-Cov-2 related medicines, diagnostics, vaccines and health products, existing or future, should be considered Global Public Goods**;** this will be the best way to make these products available to everyone, everywhere. Some World Health Organization (WHO) Member States have informed WHO and/or the Government of Costa Rica that they are joining the *Solidarity Call to Action* proposed in May,29, 2020: 37 countries have endorsed the proposal of Costa Rica that WHO establish a COVID-19 technology pool. Only five European countries have joined so far, namely, Belgium, Luxembourg, Norway, Portugal and The Netherlands. The others are low and middle income countries. Such a

pool could facilitate the sharing and transfer of knowledge and data crucial for the development of the tools needed to stop the current pandemic. The Secretary-General of the United Nations, António Guterres, issued a statement, declaring that "African countries should also have quick, equal and affordable access to any eventual vaccine and treatment, which must be considered as global public goods."

There is a risk of growing drug nationalism and other commercial and corporate initiatives, which is why the proposal by Costa Rica and the WHO of creating a global pool for rights in inventions, data, biological resources and know-how is useful in the prevention, detection and treatment of COVID-19, relevant and needs to be implemented with urgency.

Third, these trying times call for a commitment to reinforce a new type of multilateralism that responds to the most vulnerable populations worldwide. For some, the main objective of the IP system is to protect innovators and the recuperation of profit for as long as possible, without welfare considerations such as universal access to medicines, treatments and technologies to tackle COVID-19. The international (IP) law system and the neoliberal policies that the regime reinforces tend to privilege developed countries, rent seekers, transnational interests at the expense of innovators, citizens and developing countries. LDCs would be better off implementing an IP system that reflects their socio-economic needs and current realities whilst focusing on fostering domestic industry as developed countries did in their early stage of development.

There is a need to build new, effective institutions and tools to achieve the sustainable development goals by 2030. For this, critical thinking and cooperation with experts, activists and academics from developed countries and the Global South are key components to inciting the discussion and finding alternative responses.

Fourth, countries in the Global South should seek to reform the international IP law regime. There should be no monopolies on patents, data or know-how in this pandemic, instead, key stakeholders and the global community should voluntarily pool knowledge, intellectual property and data necessary for COVID-

19. All relevant technology for COVID-19 products should be available either for free, or openly licensed. This will scale up global production of relevant products, and guarantee availability in Africa, Latin America and the Caribbean, Asia and wherever needed, and ensure globally fair allocation and access for low and middle income countries (LMIC) - nobody is safe from COVID-19 until everybody is safe.

This is why we need to come up with new legal tools and South- South political and economic cooperation. This could include examining how to better use the current flexibilities of the patent system such as compulsory licences, parallel importation or make use of Article 73(b)(iii) of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) to suspend the enforcement of any IP right including patents, designs and trade secrets on the grounds of the security exception. Article 73 of the TRIPS Agreement, states that any World Trade Organization (WTO) member can take the 'actions it considers necessary for the protection of its essential security interests.' The use of this exception will be fully justified to address the current health emergency.

Reforming the international patent system and the TRIPS Agreement is the type of real and pragmatic solidarity that we need to protect the most vulnerable individuals around the world, in accordance with the provisions of diverse international treaties, including the TRIPS Agreement and the Doha Declaration on the TRIPS Agreement and Public Health. Let's take the example of the South African government's attempt to amend its laws in 1997 to resort to the use of affordable generic drugs for the treatment of HIV / AIDS, amidst international and corporate pressures and litigation. South Africa eventually won the case. This pandemic also provides us with the opportunity to challenge the conventional global regime governing IP.

On the other side of the SARS-Cov-2 pandemic, we may very well witness increased inequality worldwide, in particular in LDCs. To avoid such a scenario, it is important to elaborate and implement policies at the international, regional and local level to protect the most vulnerable countries since economic recovery will only commence in a post-COVID-19 world. This is why it is essential to develop a new legal framework to enable countries to attain the

Sustainable Development Goals, to increase the level of health protection domestically and to transition to a more sustainable and progressive economic model that takes into account the need to protect the environment and end the fossil fuel era. Finally, a new global regime should protect human life and the health of people, instead of safeguarding the exorbitant profits of transnational interests and pharmaceutical monopolies. Taken together, the aforementioned considerations are why we need open science frameworks such as the proposal of Costa Rica that WHO establish a COVID-19 technology pool of data and IP, to collect, develop and share knowledge to guarantee effective vaccines, treatments and technologies to overcome COVID-19.

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