

## **Promoting Human Rights for Public Health - Revising TRIPS for Public Health: An Ideas Contest from MSF**

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Health is a fundamental human right indispensable for the exercise of other rights. It requires that facilities, goods and services, be available in sufficient quantity, accessible to all, acceptable ethically and culturally, and good quality.

General Comment No. 14 (2000) on the right to health by the UN Committee on Economic, Social and Cultural Rights provides a more detailed explanation of the right to health. It explains that the normative content of the right to health includes accessibility of health facilities, goods, and services on a non-discriminatory basis. This includes affordability for all, in a way that 'poorer households should not be disproportionately burdened with health expenses as compared to richer households. Access to affordable health goods includes 'appropriate treatment for prevalent diseases, illnesses, injuries and disabilities' and 'the provision of essential drugs.'<sup>1</sup> Mr Paul Hunt, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, has emphasised that 'whether publicly or privately provided, the essential medicine must be affordable for all, not just the well off. Clearly, the affordability of essential medicines raises crucial issues, such as drug pricing, compulsory licensing, parallel importing, and the reduction of import duties.'<sup>2</sup>

TRIPS has always had an extremely significant impact on the right to health. And YES, it can be reformed to better address public health needs, notably by making it human rights consistent and development orientated - maximizing health benefits and minimizing risks, especially for poor and vulnerable populations. International human rights law not only provides a basis to assess the trade measures embraced by states and non-state actors in relation to TRIPS and access to affordable medication, it also provides a legal framework upon which states can develop legislation and administrative policies to regulate access to health services.

TRIPS should be reviewed and amended to ensure that:

1. It primarily and intentionally promotes and protects the right to health and remains fully compliant with all national and regional public health promoting protocols and conventions.

- The right of everyone to enjoy the highest attainable standard of mental and physical health is recognized and protected in various international human rights instruments - binding to those states which have signed and ratified them - including:
  - Article 25 of the Universal Declaration of Human Rights,
  - Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)
  - Article 24 of the Convention on the Rights of the Child (CRC)
  - Article 12, paragraph 1, Convention on the Elimination of All Forms of Discrimination against Women, (CEDAW)
  - The preamble of the WTO Constitution

- All state parties to the TRIPS Agreement are also parties to at least one of the core international human rights treaties.
2. The process of reviewing and renewing the Agreement should engage all public health community stakeholders.
- Trade negotiations are notoriously secretive, especially those that involve bilateral and regional agreements. Observing the right to participate in public affairs and the right to access information promotes greater transparency and accountability by providing citizens and civil society organisation an opportunity to monitor trade policy making processes, undertake independent assessments of the effect of trade rules on human rights and ensure that TRIPS Agreements being negotiated do not further undermine public health needs.
  - Under Article 19 of the ICCPR<sup>3</sup> and Article 13(1) of the CRC, states have an obligation to ensure the freedom to seek, receive and impart information; under the right to health, states have an obligation to ensure the right to access information and ideas concerning health issues; under Article 17 of the CRC, states have an obligation to ensure access of the child to information on his or her health. States thus have an obligation to make public information about trade policies and trade rules that affect the realisation of the right to health or the right to life.
  - Under Article 25 of the ICCPR - and echoed in Article 12 of CRC and within the provisions of the right to health - states have an obligation to ensure participation in the conduct of public affairs.<sup>5</sup> including involvement in 'all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels.'<sup>6</sup>
3. It is turned into a living instrument that can be developed further as the needs and priorities of WTO developing country members advance.

As states move towards the progressive realisation of the right to health they must take immediate, deliberate, concrete and targeted' steps to:

- Respect the right to health by avoiding any actions that would interfere with the enjoyment of this right; for example, by not signing on to TRIPS-plus agreements that limit access to affordable medicines.
- Protect the right to health by adopting systems that prevent third parties from endangering the enjoyment of this right; for example, ensuring that third parties, such as pharmaceutical companies do not adversely affect access to medicines by making them unaffordable.
- Fulfil the right to health by putting into practice national policies and legislative measures that ensure the realisation of this right; for example, by making use of mechanisms such as compulsory licences or parallel imports to ensure access to affordable medicines.
- Refrain from undermining the right to health by not taking any steps that amount to retrogression from realisation of this right; for example, by ensuring states undertake impact assessments of the effects of international trade agreements on public health and the progressive realization of the right of everyone to enjoy the highest attainable standard of physical and mental health.

The promotion and protection of the right to health must remain at the heart of public health.

References:

- CESCR, General Comment No. 14: The right to the highest attainable standard of health, UN Doc. E/C.12/2000/4 (11 August 2000)
- Commission on Human Rights (CHR), *The right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, Report of the Special Rapporteur of the Commission on Human Rights on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, UN Doc. E/CN.4/2004/49/Add.1 (1 March 2004), at 37 (c).
- HRC, General Comment No. 10.
- CESCR, General Comment No. 14, at para. 12.
- HRC, General Comment No. 25: *The right to participate in public affairs, voting rights and the right to equal access to public service (Article 25)*, UN Doc. HRI/GEN/1/Rev.7 at 194 (12 July 1996)
- Universal Declaration of Human Rights,
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Convention on the Rights of the Child (CRC)
- Convention on the Elimination of All Forms of Discrimination against Women, (CEDAW)
- The preamble of the WTO Constitution
- International Covenant on Civil and Political Rights (ICCPR)