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Truth in Defence of Freedom

Failing infrastructure renders compulsory licensing pointless 25/4/2008

By Thompson Ayodele

Switzerland is about to become ground zero for the future of health policy in Africa. Next week, the World Health Organization's (WHO) Intergovernmental Working Group will convene in Geneva to discuss public health, medical innovation, and intellectual property.

Many participants are expected to express their support for efforts to undermine patent protections for drugs. In doing so, however, these attendees ignore the more fundamental problem facing poor African nations— dilapidated healthcare infrastructure.

The anti-patent crowd believes that patents keep prices high and drugs out of the reach of the poor. They blame pharmaceutical firms for the suffering of the impoverished and call on developing nations to employ patent-revoking compulsory licenses that encourage the production of unauthorized generics.

But even if medicine were available for free, as it often is in poor nations, dysfunctional institutions and personnel ensure that the needy can't access it.

Despite unprecedented quantities of monetary aid to the ministries of health of many African countries, health systems on the continent have languished. Between 1990 and 2005, Development Assistance for Health (DAH) increased from US$2.5 billion to over US$13 billion. Overall, about ten percent of Africa's healthcare expenditures are financed by donor aid.

And yet over 50 percent of Africans lack access to essential medicines, according to the WHO. Around the world, more than 10 million children in developing countries die unnecessarily from diseases that are easily preventable and cheap to treat, like diarrhoea, measles and malaria. Furthermore, up to 80 percent of Africans have to pay for treatment straight from their own pockets.

In short, public health systems are failing to deliver. Why? For starters, nearly all foreign aid must first pass through health ministries before reaching patients. According to studies undertaken by the WHO and the Centre for Global Development, donor nations rarely know what happens to their money after they hand it over to a recipient government.

As a result of these lax controls, money is routinely subverted by health officials for private gain.

One problem is leakage of drugs from the supply chain. Publicly funded drugs can fetch a higher price if stolen and resold on the black market. Recent surveys in Nigeria show that 28 public health centres received no drugs from the federal government over a two-year period.

Meanwhile, a 2001 study by the World Bank showed that fewer than half of government health facilities in the Nigerian states of Lagos and Kogi had received any drugs from the federal government.

Last year, Dora Akunyili — the director general of Nigeria's National Agency for Food and Drug Administration and Control — disclosed that it was commonplace for donated drugs such as Vitamin A capsules, Mectizan and Coartem tablets, and oral rehydration salt to be pilfered and resold on the open market.

With incidents like these in mind, the Global Fund has considered suspending two grants to Nigeria totalling $80 million. The Fund has already terminated grants to Uganda and Chad because of bad management, lack of transparency and poor implementation of grant monies.

Theft is not the only problem. Countless other forms of corruption plague Nigeria's health system, including mismanagement of funds at the local level; employee absenteeism; extortion of patients by staff members; and the abuse of procurement contracts for hospital supplies.

According to Human Rights Watch, "the government's failure to tackle local-level corruption violates Nigeria's obligation to provide basic health and education services to its citizens." Compulsory licenses will do nothing to solve these critical issues. And they'd unleash a whole host of new problems concerning access and safety.

Last year in Thailand, for example, the military government used compulsory licenses to grant the state-run Government Pharmaceutical Organization (GPO) the right to manufacture generic versions of AIDS and heart-disease medications. Many activists applauded the move, even as Thai leaders turned down the Global Fund's offers of free medicine.

Unfortunately, domestic production has proved too expensive, and access to needed medicines has decreased substantially for sick Thais.

Further, the GPO has a history of producing shoddy products, including a different anti-AIDS medication called GPO-Vir. This substandard antiretroviral actually accelerated the resistance of HIV to treatment, consigning scores of Thai patients to early death. Yet Thailand's patent theft continues. Last month, the nation announced that it would rescind the patents on four cancer drugs.

As long as healthcare delivery remains in the hands of dysfunctional governments, the health of the poor in developing nations will never improve.

Aid groups and policymakers must instead enlist the help and expertise of the private sector.

The advantages of this are two-fold. First, it would reduce corruption. Corruption certainly exists in the private sector as well, but private enterprises with ethical problems risk exclusion from the next round of programmes and contracts.

Second, competition governs the private sector. Firms that fail or receive low marks from customers or aid organizations will lose out to competitors. Market participants are forced to improve productivity and patient care or face extinction.

In the public sector, by contrast, organizations or governments proven inefficient tend to get more money — even as they've demonstrated themselves incapable of doing the job.

According to the International Finance Corporation, 60 percent of the US$16.7 billion spent on health in Africa in 2005 was privately financed, with half of that spent in the private sector. It is time to harness this vast sum so it can work for patients in an efficient and equitable way.

Rather than encourage the wilful destruction of drug patents, conference attendees ought to call for measures that would actually improve the health of those in poor nations, like increased investment in infrastructure. To do otherwise would hurt those who most need help.

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