

The intellectual property myth behind health and trade agreements

Wednesday 27 June 2018, by [CHATTERJEE Patralekha](#), [MELLOUCK Othoman](#) (Date first published: 18 June 2018).

Intellectual property negotiations are dominated by the counties that export intellectual property. The counties of the global south have often failed to identify and protect their own interest as intellectual property importers

Intellectual Property Watch (IPW): Conventional wisdom has it that strong protection of intellectual property rights leads to development through the promotion of innovation. Does IPR have the same impact on all countries, irrespective of their level of development?

OTHOMAN MELLOUK (MELLOUK): Intellectual property exporters and intellectual property importers do not have the same interests. Countries which export intellectual property, whether it be in pharmaceuticals or software, will be interested in protecting what they produce nationally and globally, whereas those who import them have a different set of interests and should develop a policy to suit their own interests. Developing countries which rely on others' intellectual property want minimum safeguards, which is laid down in TRIPS. Now, TRIPS is not perfect but at least while it guarantees minimum protection for IP rights holders, countries still have policy space to adapt national laws with their level of development. So it is not surprising that the United States and the European Union are pushing for stringent IPR regimes with 'TRIPS plus', because they are protecting their own industries. The big mistake is when countries which rely on others' intellectual property also apply TRIPS plus, because it does not benefit them. This happens because of propaganda and the the big myth that intellectual property promotes innovation.

IPW: Why is it a big myth? Do strict IPR clauses in free trade agreements not boost investment in your opinion?

MELLOUK: It is a big mistake to think that strengthening IP promotes innovation. It does not. It makes countries rely on others' innovation. Innovation is dependent on many other things - level of education, investment in research, creation of knowledge infrastructure that will help innovation. It is not about just IPR. The other argument is that IP promotes investment, that it will create jobs and growth. Again, this is not true but this is the argument trotted out during negotiations for free trade agreements, which is not true. Take the example of the free trade agreement between Morocco and the United States. This agreement has strict provisions as far as IPR is concerned and has been in existence for 13 years. But what has been the result? It has led to more exports from the US to Morocco and the US has not invested much in these 13 years, nor created jobs in Morocco. Two official Moroccan reports attested to the fact that this free trade agreement was imbalanced, not in favour of Morocco. But yet this myth linking IPR and investment continues. This is to promote a shift in national policies. I think intellectual property rights should be looked at country by country, and each country should have an IPR policy adapted to its level of development and needs. Policymakers and politicians do not always understand IPR and in the popular perception this is a 'bad versus good' issue. But this is not a moral issue or ideological issue nor about good versus bad.

IPW: Morocco accepted TRIPS plus provisions in its free trade agreement with the US and then what happened?

MELLOUK: Yes, Morocco accepted everything. We accepted expansion of patent duration beyond 20 years; we accepted data exclusivity in medicines; we accepted patents on new use of old medicines; we accepted limitations on compulsory licenses and we accepted linkage between marketing approval and patent status. That is at least 5 important TRIPS plus measures. This agreement is considered one of the worst.

IPW: Did medicine prices go up?

MELLOUK: That is the big issue. We don't have any impact study. The prices of medicines are very high here and some medicines in Morocco have higher prices than in Europe. A study from the Moroccan Parliament mentions this and yes, all this has happened in the last 13 years. But there is still no real impact study of the Morocco-US free trade agreement. That is the problem. Countries negotiate without impact studies on things like medicines. When the negotiations of this treaty were going on, we asked the government to do an impact assessment on medicines but they have not done it up till now. Such calculation models have been done by Brazil and Argentina.

Now Morocco is negotiating a free trade agreement with the EU. But this time, negotiations are blocked due to many reasons because many people are opposing it, including us on the issue of access to affordable medicines. The government is now willing to do an impact study. So lessons are being learnt but after 13 years. I remember this period of the Morocco-US FTA. When the negotiations started in 2004, nobody knew anything about IPR. We were talking to politicians and decision makers and all of them thought it was a good thing, that it would increase investments, create lots of jobs. But it did not happen. Why? The reason is simple: if you protect people's products, why would they come to produce them in your country? They are going to export to you and you have created the infrastructure to protect their products. So, there is no clear link between strong protection of IPR and innovation and investment. Take a country with strong IP protection like the US. Where is the research on neglected diseases? If we leave the innovation in the hands of the pharmaceutical industry, then innovation will be linked to what gets the maximum profit, Innovation is linked to the market. It is also linked to how much you invest in research, budgets for research, and a whole new framework that you need to set up if you want to have innovators. So the central message is that there is no one size fits all for IP. Each country should have its own specific IP regime that is adapted to its own level of development.

IPW: How does one challenge the myths around IPR and trade and innovation? What role do you see for civil society in countering the current challenges in this area and protecting public health and public interest?

MELLOUK: Civil society can and does play a big role and it has many challenges. One challenge is limited access to the media. It is a fact that not every journalist is interested in these issues. There is a lot of capacity building that needs to be done. You need a lot more education, public awareness about patent abuses like how patents on same product can be multiplied to extend monopolies, and you need awareness about the need for transparency in the drug pricing system alongside a dialogue with stakeholders. Things are changing. Today, if you talk to a Moroccan journalist about free trade agreements, you would hear many say that they are dangerous. This was not always so. During the first FTA which Morocco signed, everyone thought free trade agreements were great. So it is the responsibility of civil society to expose these abuses. And we can see the changes. Public opinion has shifted in the last 13 years since the first FTA that Morocco signed with the US.

Of course, the challenges persist too. The topic of IPR is complicated. It is not easy to get the media

to be drawn to such themes unless it is a specific case like the Novartis case in India. There, it was not about theory, it was not about what may happen ten years from now. It was a specific case. But if you speak in theory, no one is interested. When we were negotiating our first FTA, it was 2004. We did not have even patents. That came in 2006. If we said a drug that may be in the market in 2016 will be unaffordable, no one would show interest. It is easier to mobilise the media and public opinion where there is a medicine, there are people who may die if they don't have access to this medicine. In Morocco, price of medicines is a big issue. About 65% of the population has insurance coverage but even when you are covered, you are not covered for all diseases. Treatment for HIV is free of charge but HIV is an exception. Here we have the Global Fund [for AIDS, Tuberculosis and Malaria] supporting the cost. But there is no Global Fund for hepatitis C and cancer and the question is: what will happen if there is no Global Fund and when Morocco is not eligible for Global Fund assistance any longer?

IPW: Thank you.

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P.S.

Dr Othoman Mellouk is a Moroccan treatment advocate who has been working on intellectual property and access to medicines for more than a decade. He is the Intellectual Property and Access to Medicines Lead at the international treatment preparedness coalition (ITPC), a global network of people living with HIV and their advocates working together to achieve access to HIV and Viral Hepatitis and a member of the WHO Strategic and Technical Advisory Committee on HIV and Hepatitis. Dr Mellouk started off in the Association for the Fight against AIDS which has been at the forefront of the response to HIV in Morocco and the introduction of the first anti-HIV generic medicines in the country. In a series supported by the Make Medicines Affordable organisation, Mellouk recently engaged in an interview with Patralekha Chatterjee for Intellectual Property Watch.

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