

STORY OF CHANGE: MYANMAR

Medicine for All: An Advocacy Strategy for Equal Access to Lifesaving Medicines

Introduction

In 2020, AIDS is no longer seen as a death sentence. A variety of prevention options and treatments are available which allow people living with HIV (PLHIV) to have a good quality of life. However, not everyone has the possibility of accessing these medications and limited access to HIV medicines is one of the key drivers of health inequity.¹ One accessibility issue that is too often overlooked is the role of patents. Medications which are protected by patents tend to be expensive, as pharmaceutical companies try to recoup their research and development costs. If laws regarding Intellectual Property for lifesaving medicine are mishandled, medication becomes more expensive, imports slow down, and bureaucratic burdens increase. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is an agreement between member nations of the World Trade Organization (WTO) that sets out minimum standards for the protection of intellectual property, including patents on medicines. There is growing concern and evidence that implementing the TRIPS Agreement patent rules might restrict access to affordable medicine for people in developing countries, particularly for HIV/AIDS, tuberculosis, and malaria.

The problem

Between January and May 2019, the Myanmar Parliament approved four intellectual property (IP) laws, in line with the TRIPS agreement. Among these, the Patent Law was approved on the 11th of March 2019. This law provides protection for inventions related to products and processes that meet certain requirements, including lifesaving medicines. The Patent Law was designed by the Intellectual Property Department under the Ministry of Education and administrated by the Directorate of Patents of the Intellectual Property Office under the Ministry of Commerce. Despite the fact that the Patent Law also affects the prices and distribution of medications, the Ministry of Health and Sport (MoHS) was not invited to participate in the final stages of the process of developing this law. After the approval of the Patent Law and during the by-law development process, communication gaps emerged between the MoHS and the Ministry of Education to participate in by-law development process.

This suggests that the law may have run the risk of excluding important health-related issues and considerations. “The Patent Law is made at the benefit of the economic development in Myanmar” (Myanmar CFP). Myanmar’s creative and entertainment business industry demanded the government have IP laws and a patent system, highlighting the importance of having such laws to welcome foreign investments. However, as discussed above, placing patents on medicines risks increasing their prices, making them inaccessible to KPs and other vulnerable parts of the population. This is an important issue for everyone, but it is particularly pressing for PLHIV, whose lives depend on treatment access.

¹ *The Global Action Plan for Healthy Lives and Well-being for All*

For instance, potential patent restrictions could increase the price of anti-retroviral therapy (ART) which would in turn have a negative impact on PLHIV's health. The MoHS is aware of these sensitivities given its responsibility for the National AIDS Programme, while the Ministry of Education has collaborated with MoHS as part of the law drafting process on the specific needs and potential ill effects of the Intellectual Property legislation on medication accessibility. However, the MoHS has not been able to continuously participate in the by law development process and in the enforcement of the Patent Law.

Communities expressed concerns related to the level of participation of MoHS in the by-law development process, as well as the enforcement of the Patent Law, particularly the provisions related to TRIPs flexibility on access to medicines during the legislative transition process. The involvement of MoHS when organizing the Intellectual Property Rights Central Committee, in accordance with the approved Patent Law was critical for ensuring legal authorization to supervise and allow or refuse the granting of mandatory licenses on patent of medicines after the graduation of Myanmar from its Least Developed Country status in the near future. This is why organizations advocating for the health and rights of People Living with HIV (PLHIV) pushed to get the MoHS involved in the by-law review process.

“All other related ministries were involved in the Intellectual Property by law development process but not MoHS. Without MoHS, we were concerned that it would be difficult to have access to ART and other medicines. Without MoHS in the by-law process, the PLHIV community won't have a voice. MoHS can protect and work for PLHIV community” (CFP).

The change process

The PITCH partner Myanmar Positive Group (MPG) structured an entire advocacy strategy which focussed on the importance of involving MoHS in the by-law process of the Patent Law. On the 15th of February 2019, before the official publication of the proposed legal text, MPG organized a multi-stakeholder consultation meeting in Yangon to discuss the Patent Law with organizations like U Hla Tun Cancer Foundation and Liver Foundation. Following this meeting, on the 16th of February, PITCH partners formed a Community Advocacy Working Group to provide coordinated technical assistance on the law. The organizations involved included Alliance Myanmar, MPG, Myanmar Positive Women Network (MPWN), Myanmar MSM & TG Network (MMTN), Myanmar Youth Starts (MYS), SWiM, AMA, and other members of the Community Network Consortium on HIV (CNC) such as MINA, 3N and NDNM and technical partner UNAIDS. During a regular advocacy visit to Peoples' Parliament Health and Sport Development Committee, the chairperson of MPG together with leaders of CNC advocated to push forward the community's concerns about the limited use of TRIP flexibilities and MoHS involvement in the Patent Law bill. On the 14th of June 2019, the Community Advocacy Working Group presented the same advocacy points to the MoHS and at the Department of Patent and Copyright (part of the Intellectual Property Department).



In June 2019, MPG then formed the Access to Medicines Community Working Group with sixteen organizations. The new working group was composed by core members of the original Community Advocacy Working Group, PITCH partners MPWN, MMTN, MYS, SWiM, and AMA, as well as HIV networks, nine community organisations (including Hepatitis C, Tuberculosis and Cancer community groups), and five NGOs/UN institutions. This working group held meetings in Yangon on the 9th of September and 8th of October 2019 to discuss the progress of advocacy on access to medicine for reducing patent-related barriers. They reviewed the draft legislation and developed concrete advocacy points that were brought to the attention of the Intellectual Property Department (IPD), the National AIDS Programme (NAP), and the Bill Committee during the by-law process of the Patent Law.

The advocacy points included a call for some leeway for drugs, essential for key populations, in line with the TRIPS agreement, to ensure the import of medicine whenever needed. During this process, MPG received flexible investment funding through PITCH, allowing this partner organisation to support members of the Community Advocacy Working Group with training on the TRIPS agreement and public health. This flexible investment funding allowed MPG and working group members to participate in different activities related to patent law advocacy. One example includes MPG's participation in the "Reinvigorating Global Health Agencies to Address Intellectual Property and Access to Medicines" training in Paris on the 10th and 11th of December 2019. The travel costs for MPG to travel to Paris were provided by meeting organizer STOPAIDS.

On the 4th of February 2020, the working group organized a meeting with the Department of Patent and Copyright (part of the Intellectual Property Department) of the Government of Myanmar to highlight the importance of involving the MoHS in the by-law process. Finally, on the following day during a high-level meeting in Naypyidaw, the Intellectual Property Department announced that it would involve the MoHS in the by-law review process of the Patent Law.



Significance

The involvement of the MoHS in the Patent Law by-law review process is a great success not only for PLHIV, but for all groups whose lives depend on medicines. The MoHS did not originally assign a representative in the Patent Law by-law development process carried out by the Ministry of Education's Intellectual Property Department, which was why the involvement of the Community Advocacy Working Group was so important. The MoHS was expected to ensure that health-related concerns are taken into account in decisions regarding medicine price and distribution, avoiding the possible negative impacts of the Patent Law on affordable access to life-saving medicine. Additionally, PITCH partners expect to be closer to the Patent Law review process because of the positive relationship they were able to establish with the MoHS. This achievement is particularly important for MPG and all PITCH partners more broadly because it shows their ability to successfully engage with advocacy targets and establish trusting relationships with them.

Lessons learned

This process was not only a success, but also a great learning journey. MPG and the other PITCH partners strengthened their advocacy capacities by setting up a complex advocacy strategy. They articulated their efforts with a number of CSOs, NGOs, and members of the government to ensure equal access to HIV treatment, learning that sometimes advocacy capacity alone is not enough. *"Intellectual Property rights and its related laws are very difficult to understand for those who do not have the background knowledge."* (PITCH CFP)

At the beginning of the advocacy process, many members of MPG and the other PITCH partners were not familiar with the IP laws and Property Rights and thus faced difficulties. *"We had to review the patent laws in other countries and had to digest the inputs from the law experts to participate in the discussion. It was not easy as we are not familiar with the patents and 'IP law things.'"* (PITCH Implementing Partner).

Partners learned that technical knowledge is key in advocacy and that they need more resources and people to support advocacy strategies from a legal framework.

The story was prepared as part of the End Term Evaluation of the PITCH Programme in 2020, conducted by Results in Health team: Aryanti Radyowijati, Conny Hoitink, Zaire van Arkel, Maurizia Mezza, Lingga Tri Utama, and Frederike Engeland (national consultant).

