

Preface and Acknowledgments

Mahatma Gandhi (1869–1948) once identified two of the seven sins in the world as: “commerce without morality” and “science without humanity.” I do not know if Gandhi’s advice to moderate trade and science for the benefit of humanity had anything to do with patent law. But such a humanist approach to life is what many voices from different parts of the globe have articulated in policy and academic discourse on patents, and mine is no exception. This book thus advocates a need to reconstruct the globalized patent regime to address public health and development challenges that confront the citizens of countries in Sub-Saharan Africa (hereinafter SSA or Africa).

This book was inspired by the absence of a comprehensive study of the connections between patents, access to medicine, and development in SSA. My interest in this topic developed from witnessing firsthand the hardships that individuals go through in parts of Africa to obtain treatment for otherwise curable diseases. This book, therefore, contributes to the rich discourse on patents, public health and development, from a subaltern perspective, by proposing a legal framework for the adoption of pharmaceutical patents that serve human development needs in SSA. The book will serve as a resource text for students, scholars, and policy-makers working in the fields of patents, public health, constitutional law, political science, and development studies in Africa and beyond. The research for this book was conducted in September 2008 to January 2012.

The book outlines the systemic problems associated with the prevailing globalized patent regime and the regime’s inability to promote access to life-saving medication at affordable prices in poor regions such as SSA. The book then goes on to argue that for pharmaceutical patents to retain their relevance in SSA countries human development concepts must be integrated into global patent law and policy-making. An integrative approach here implies developing additional public health and human development exceptions/limitations to the exercise of patent rights with the goal of scaling up access to essential medicines to treat

epidemics in SSA. By essential medicines, I mean drugs that satisfy the priority health-care needs of the majority of the population in SSA.

So conceived I draw on multiple perspectives of laws, institutions, practices, and politics to inform my analyses in making a case for recalibrating the globalized patent regime to promote public health in SSA countries. Further, I suggest that SSA countries adopt an evidence-based approach to implementing global patent standards in domestic jurisdictions. This evidence-based approach would include mechanisms like local need assessments and the use of empirical data to shape domestic patent law-making endeavors. The approach also implies revising patent rules and policies with a pro-poor and pro-health emphasis, so that medication will be more affordable and accessible to the citizens of SSA countries. It also suggests considering the opinions of individuals and pro-access institutions in enacting crucial pieces of health-related statutes in SSA countries. The approach in this book is sensitive to the public health needs of the citizens affected by epidemics and to the imperative of building local manufacturing facilities for pharmaceutical research and development in SSA.

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