

## South Africa should adopt flexibilities provided in TRIPS to restrict secondary patenting and to override patents that block medicines access.

South Africa published a draft intellectual property policy in 2017 proposing law reforms which could hugely benefit cancer patients. Each day that this policy is not finalised and legislated, cancer patients in South Africa die because medicines are unaffordable or unavailable.



### TWEET YOUR SUPPORT!

- @the\_dti to urgently #FixPatentLaw to improve cancer medicine access and save lives.
- @Cancer\_ZA @FixPatentLaw calls for urgent patent reform to improve treatment outcomes for patients #LetsTalkAboutCancer



[www.canceralliance.co.za](http://www.canceralliance.co.za)



[www.fixthepatentlaws.org.za](http://www.fixthepatentlaws.org.za)

## Our study analysed the patent status, affordability and accessibility of 24 cancer medicines.

### 1. PATENT STATUS AND LENGTH

- We found a total of 92 secondary patents of which 74 were active and thus potentially competition-blocking in South Africa.
- Of the total 92 secondary patents, 39 were rejected or withdrawn in another region.
- An additional 17 patents are pending or accepted in South Africa, 6 of which had been rejected or withdrawn in another region.

**Secondary patents can significantly extend the length of monopoly protection beyond the 20 years mandated by international law.**

### 2. AFFORDABILITY

- Of the 24 medicines, 15 are available in India for less than half of the price offered to the South African private sector.
- In the most extreme case, a year's supply of Lenalidomide is priced at ZAR 882,000 in South Africa and less than ZAR 32,000 in India.

**10 medicines that are not available in the South African public sector – likely due to their cost – are available in India for less than half the price offered to the South African private sector.**

### 3. ACCESSIBILITY

Of the 24 case study medicines:

- 21 are available in the private sector in SA,
- 7 are available in the public sector in SA,
- 10 are on the WHO's Essential Medicines List (EML), and
- only 4 are on South Africa's Essential Drugs List (EDL).

# POOR QUALITY PATENTS ARE TAKING LIVES EVERY DAY.

## SOUTH AFRICA NEEDS PATENT LAW REFORM NOW.



Collective South African Voices for Cancer






## WHAT IS A PATENT?

A patent is a reward that is given to a company that allows it to sell a product with no competition from other companies. Under an international treaty, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), South Africa must provide 20-year patent periods on new inventions that meet patentability criteria, including medicines.

## WHAT ARE SECONDARY PATENTS?

Secondary patents are patents granted on minor modifications to, or new uses of, existing medicines. Because one medicine often has multiple secondary patents – each providing 20 years of protection – they can significantly extend the length of patent protection for a given medicine beyond 20 years.

## THE STATE OF CANCER

 **85%**  
expected increase in new cancer cases in sub-Saharan Africa between 2008 and 2030.

 **3/4**  
for every four HIV/AIDS deaths in sub-Saharan Africa, there will be three cancer deaths by 2030.

 **R23,533**  
is the average cost of speciality cancer medicines in South Africa – PER ITEM.

 **\$1658million**  
is the median revenue for a cancer drug. Research and development costs are only \$648million.

## HOW DO PATENTS AFFECT MEDICINE PRICES?

Patents restrict competition. When a company has a patented product, they are able to charge whatever price they want because no other competitors can sell the product. This monopoly is one of the main reasons why medicines are so expensive.

## THE STUDY\*

In 2017, the Cancer Alliance prepared a report for the Fix the Patent Laws coalition to investigate how South African patent law influences access to 24 cancer medicines.

Our research revealed significant gaps in access to cancer medicines. These gaps were driven by high prices which, in turn, were linked to secondary patents that could have been rejected if South Africa had stronger patentability criteria, patent examination processes, and opposition procedures.

\*Full report entitled *Exploring Patent Barriers to Cancer Treatment Access in South Africa: 24 Medicine Case Studies* is available for download at [www.canceralliance.co.za](http://www.canceralliance.co.za)

## HOW DOES SA COMPARE TO OTHER REGIONS?

Generics available out of 24 case study medicines.



Annual cost of treatment on selected cancer medicines

