

Uganda, Tanzania, Zambia too planning anti-counterfeit legislations despite India's caution

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Even as India has been exhorting the African nations not to fall prey to the designs of the multinationals by enacting anti-counterfeit laws to block generic supply, and the public interest groups worldwide are expressing concerns on such moves that would hamper access to medicines, more African countries are moving ahead with the plans in this direction.

After Kenya started the trend last year by enacting a law which virtually equated generics as counterfeit drugs, now Uganda has started deliberations on a similar law while Tanzania and Zambia are also considering the option, it is learnt. Notwithstanding the advice on one hand from Indian authorities and stiff resistance from Indian generic industry on the other hand, the multinationals and the developed nations are trying to prevail upon the African nations, say the public interest groups.

"The problem is the scope of such legislation. In the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), counterfeit is defined as pertaining to trademark infringement. In the Kenyan bill, it goes beyond TRIPS by referring to all IP infringements such as patents, trademarks, copyrights, industrial designs, and even plant variety protection. This has never happened before that a violation of plant variety could be called a counterfeit," according to Sangeeta Shashikant, senior legal advisor at the Third World Network.

Such legislation does not recognise that there is a difference between trademarks and patents. Patents protect the invention, the subject matter and rights and obligations are different. The Kenyan bill also goes against existing IP legislation on specific areas of IP rights (like copyright) whose limitations and exceptions are not recognised in the counterfeit bill, she said.

Confusion between legitimate generic medicines, poor quality medicines and those illegally copying the trademark of a brand-name product could have a devastating impact, and a precise definition and scope of counterfeiting is needed, according to public interest groups like Medicins Sans Frontieres. IP enforcement measures should only be used against drugs with trademark violations, they feel, adding that any attempt to bracket IP violations and generic drugs would hamper the efforts to access to medicines across the globe.

It is important that even if a branded or generic drug has not been licensed for international trade by the drug regulatory authority of one country, it can be licensed by the authority of another country and the transit of this drug must be guaranteed, they said.