

Access to medicines: The interface between patents and human rights. Does one size fit all?

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Stellingen behorende bij het proefschrift

Access to Medicines.

The Interface between Patents and Human Rights.

Does one size fit all?

Jennifer Anna Sellin

1. The core obligation to provide essential medicines under Article 12 ICESCR does not have a superior status under international law. Thus, the non-derogable nature of such obligations, as argued by the United Nations Committee on Economic, Social and Cultural Rights, is questionable.
2. IP has a social function and is an important national policy instrument. Consequently, with respect to international standards for the protection of IP, one size does not fit all. Therefore the most valuable flexibility for (developing) states under the TRIPS Agreement is the (interpretative) leeway to organise their patent systems in a manner which suits their needs best.
3. Fundamentally, there is no genuine conflict between provisions of the TRIPS Agreement and the ICESCR. However, tension exists between the ICESCR and TRIPS due to the manner in which both are interpreted and implemented internationally and in a national context.
4. In light of the principle of systemic integration of international law, WTO dispute settlement bodies should interpret the TRIPS Agreement in light of the human right of access to essential medicines.
5. For human rights to be truly effective, they must be justiciable and enforceable. The argument that economic, social and cultural rights are completely non-justiciable and non-enforceable is outdated.
6. Intellectual property rights are not human rights.
7. TRIPS-plus free trade agreements resulting in a global development of ever-increasing standards of IP protection have, and will continue to, tip the balancing mechanism in the TRIPS Agreement and the Doha Declaration on TRIPS and Public Health in favour of stronger IPRs.
8. To interpret a rule is to assign a meaning to words contained therein. Words can mean many things to many people. So the process of eliciting the different meanings, and particularly the “correct” meaning, from a treaty is altogether a creative process leaving room for extra-legal considerations such as one’s personal and cultural background.
9. “Oh! Do not attack me with your watch. A watch is always too fast or too slow. I cannot be dictated to by a watch.” – Jane Austen.