

## Urgent Appeal to Working Group on Transnational Business and Human Rights Executive Summary

**Victims:** The users of the public health system and people in need of medicines in Brazil.

**Perpetrator of the violation:** INTERFARMA - Pharmaceutical Research Industry Association, composed by 52<sup>1</sup> transnational and national pharmaceutical companies - and the Brazilian State.

**Organizations submitting the complaint:** Working Group on Intellectual Property of the Brazilian Network for the Integration of Peoples (GTPI/Rebrip - acronym in Portuguese).

Pharmaceutical companies have carried out significant legal efforts questioning the legitimate use of measures within the intellectual property system that can be used to promote access to medicines, including pro-public health laws and policies in developing countries. It has historically generated experiences of resistance from civil society, such as in the case of 39 pharmaceutical companies in South Africa in 2001 and the Drop the Case campaign against Novartis in India in 2006. More recently, the case against the new patent examination guidelines in Argentina reinforces this repeatedly threat.

In Brazil, it is of special concern the violation of the right to access to medicines by INTERFARMA, which has recently put legal efforts to undermine an important public health measure established by the Brazilian Patent Law. In November 2014, the pharmaceutical companies association filed a lawsuit that seeks to withdraw the participation of Ministry of Health in the analyses of pharmaceutical patent applications, known in Brazil as National Agency for Sanitary Vigilance (ANVISA)'s prior consent. This has been an important measure to avoid unmerited patent monopolies that could hinder state's capacity to fulfill the human right to health.

Patents generate a significant barrier to access to medicines. The monopoly created by pharmaceutical patents increases the price of medicines because only one company can manufacture the medicine. It increases public and private spending on purchasing medicines and hinders the sustainability of the countries' health systems. High drug prices caused by patent monopolies excludes millions of people from access to health technologies in low, middle and even high-income countries.

ANVISA's prior consent has been internationally considered a good practice to enhance the examination of pharmaceutical patents from a public health perspective. It has prevented the granting of numerous undeserved and inaccurate patents that would had been otherwise approved. In a right to health perspective, patent examination should follow a strict standard in order to focus on genuine innovation and prevent monopolistic practices on products that are already known, hindering access by delaying the entry of generic drugs on the market.

According to the United Nations *Pharmaceutical Companies and Human Rights Guidelines*, pharmaceutical companies should not seek to compromise the flexibilities and other features of the

---

<sup>1</sup> Abbott, Abbvie, Actavis, Actelion, Aegerion Pharmaceuticals, Alexion, Allergan, Amgen, Astellas, AstraZeneca, Bagó, Baxter, Bayer, Besins Healthcare, Biogen Idec, Biomarin, Biominas Brasil, Boehringer Ingelheim, Bristol-Myers Squibb, Celgene, Chiesi, Daiichi-Sankyo, Ferring Pharmaceuticals, Galderma, GE, Genzyme, Glenmark, Gsk, Grünenthal, Ipsen, Isdin, Janssen, Leo, Lilly, Lundbeck, Merck, MSD, Mundipharma, Novartis, Novo Nordisk, Pfizer, Pharma Praxis, Pierre Fabre, Reckitt Benckiser, Roche, Sanofi, Servier, Shire, Stiefel, Takeda, TheraSkin and Zambon. Available at: <http://www.interfarma.org.br/>.

intellectual property regime that are designed to protect and promote access to existing medicines. Pharmaceutical companies should always comply with the national law of the State where they operate and respect the right of countries to use, to the full, the provisions in the TRIPS Agreement.

Moreover, the State of Brazil has the duty to ensure that third parties do not obstruct the enjoyment of the right to health in its territory. Brazil must take all necessary measures to prevent pharmaceutical companies from carrying out actions that could encourage the State to act in a way that is inconsistent with its obligations arising from national and international human rights law.

This case has already been reported in the occasion of the Working Group on Transnational Business and Human Right's visit to Brazil in December 2015, as well as in the interactive dialogue held with the latter during the 29th session of the Human Rights Council. The violation here reported relates with the urgent appeal sent by GTPI in 2015 to the Special Rapporteurship on the Right to Health.

The complaint will be submitted in the near future by the Working Group on Intellectual Property of the Brazilian Network for the Integration of Peoples to the United Nations Working Group on Transnational Business and Human Rights. It will mean a good opportunity for the UN Working Group to engage and address the issue of pharmaceutical patents and human rights, bringing focus to the responsibility of pharmaceutical companies for the gross and systematic human rights violations of millions of people throughout the world who cannot have access to existing live-saving medicines.

#### **About us**

The Working Group on Intellectual Property of the Brazilian Network for the Integration of Peoples (GTPI/Rebrip) is a group made up of civil society organizations, researchers and activists. Since 2003, we develop activities aimed at reducing the negative impacts of patents on public health policies in Brazil and in the Global South.

GTPI is currently comprised by the following organizations: (1) ABIA – Associação Brasileira Interdisciplinar de AIDS (Brazilian Interdisciplinary AIDS Association) (coordination); (2) Conectas Direitos Humanos (Conectas Human Rights); (3) RNP+/MA - Network of People Living with HIV/AIDS Maranhão; (4) FENAFAR – Federação Nacional dos Farmacêuticos (National Federation of Pharmacists); (5) GAPA/SP – Grupo de Apoio à Prevenção à AIDS de São Paulo (Support Group for AIDS Prevention in São Paulo); (6) GAPA/RS – Grupo de Apoio à Prevenção à AIDS do Rio Grande do Sul (Support Group for AIDS Prevention in Rio Grande do Sul) (7) GESTOS – Soropositividade, Comunicação e Gênero (GESTOS - HIV+, Communication and Gender); (8) GIV – Grupo de Incentivo à Vida (Incentive to Life Group); (9) Grupo Pela Vida/SP (Group for Life in São Paulo); (10) Grupo Pela Vida/RJ (Group for Life in Rio de Janeiro); (11) GRAB – Grupo de Resistência Asa Branca (Resistance Group Asa Branca); (12) IDEC – Instituto Brasileiro de Defesa do Consumidor (Brazilian Institute for Consumers Protection); (13) UAEM – Universities Allied for Essential Medicines – Brazil.

More information available at: [www.deolhonaspateentes.org](http://www.deolhonaspateentes.org).