Access to Medicines
The Interface between Patents and Human Rights. Does one size fit all?
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Access to Medicines
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Does one size fit all?

Jennifer Anna Sellin
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Dedicated to W.T. Mugwiji
When I started working at the Faculty of Law of Maastricht University in the fall of 2007, I did not know what to expect. It turned out to be a life-changing decision. Above all it was a learning-experience, leading to the writing of this dissertation.

At last my name is on the cover of this book, but there are many people that have had a part in its progress and completion.

The process of writing a PhD is both wonderful and terrifying. The freedom to go wherever your research leads you is wonderful, the knowledge that you are the primary source material is terrifying. First and foremost, I have to thank my supervisors, Prof. Fons Coomans and Prof. Anselm Kamperman Sanders, for carefully reading and commenting upon the various drafts of the chapters of this dissertation. The combination of their respective areas of expertise and the confidence they showed in this endeavour have been crucial in getting this dissertation completed.

It was Fons who asked me to consider taking on this task when I was only a student-assistant for the Maastricht Centre for Human rights. And he has been a constant guide to me through this entire process. I thank him for sharing his knowledge and expertise and, especially, for taking the time to listen. I really appreciate him as a supervisor and colleague.

This research benefited from interviews with various people, all of whom, provided me information, shared their knowledge and answered my queries without hesitation. Special thanks to Moses Mulumba who was indispensable to making the most out of my short trip to Uganda, dr. Maheshwar Singh who made my trip to New Delhi successful on both a legal and culinary level and Leena Menghaney, who was a life saver at a moment of real crisis.

I also thank the members of the Assessment Committee who kindly agreed to read and evaluate the dissertation: Prof. Menno Kamminga, Prof. Peter van den Bossche, Prof. Paul Hunt, Prof. Duncan Matthews and Prof. David Townend.

Writing a PhD can be a lonely experience. My colleagues at the Faculty, many of whom have become dear friends, have really helped to make it seem less so. Thanks to all of you who have read, commented and discussed with me various aspects of my research and, maybe even more importantly, for the coffee breaks, dinners and nights out which made my time at the faculty enjoyable. In particular to:
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A very special thank you to my paranymphs Eliza and Tamara, for their support and friendship. Ineke, my best friend, and constant inspiration. And, Whitlaw, for being a distraction (both good and bad), always being able to calm me down and loving me just the way I am, flaws and all included. I couldn’t have done it without you!

And finally, my profound thanks to all my family, friends and colleagues for making sure I kept going, when giving up sometimes seemed the easier option. In particular to my parents, who taught me the most important lesson of all: that my family will always support me.

The sense of pride and satisfaction that comes from completing my dissertation is down to you.
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<th>Full Form</th>
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<tbody>
<tr>
<td>AB</td>
<td>Appellate Body (World Trade Organisation)</td>
</tr>
<tr>
<td>ALP</td>
<td>Aids Law Project</td>
</tr>
<tr>
<td>ARVs</td>
<td>antiretrovirals</td>
</tr>
<tr>
<td>BI</td>
<td>Boehringer Ingelheim</td>
</tr>
<tr>
<td>BITs</td>
<td>bilateral investment treaties</td>
</tr>
<tr>
<td>CEDAW</td>
<td>Committee on the Elimination of All Forms of Discrimination against Women</td>
</tr>
<tr>
<td>CESCR</td>
<td>Committee on Economic, Social and Cultural Rights</td>
</tr>
<tr>
<td>CRC</td>
<td>Committee on the Rights of the Child</td>
</tr>
<tr>
<td>DPSP</td>
<td>Directive Principles of State Policy (India)</td>
</tr>
<tr>
<td>DSB</td>
<td>Dispute Settlement Body (World Trade Organisation)</td>
</tr>
<tr>
<td>DSU</td>
<td>Understanding on Rules and Procedures for the Settlement of Disputes</td>
</tr>
<tr>
<td>ECOSOC</td>
<td>UN Economic and Social Council</td>
</tr>
<tr>
<td>EFPIA</td>
<td>European Federation of Pharmaceutical Industries and Associations</td>
</tr>
<tr>
<td>EMRs</td>
<td>exclusive marketing rights</td>
</tr>
<tr>
<td>ESC rights</td>
<td>economic, social and cultural rights</td>
</tr>
<tr>
<td>FDA</td>
<td>US Food and Drug Administration</td>
</tr>
<tr>
<td>FDI</td>
<td>foreign direct investment</td>
</tr>
<tr>
<td>FTAs</td>
<td>free trade agreements</td>
</tr>
<tr>
<td>GA</td>
<td>UN General Assembly</td>
</tr>
<tr>
<td>GATS</td>
<td>General Agreement on Trade in Services</td>
</tr>
<tr>
<td>GATT</td>
<td>General Agreement on Tariffs and Trade</td>
</tr>
<tr>
<td>GDP</td>
<td>gross domestic product</td>
</tr>
<tr>
<td>GNI</td>
<td>gross national income</td>
</tr>
<tr>
<td>GSK</td>
<td>GlaxoSmithKline</td>
</tr>
<tr>
<td>HAI</td>
<td>Health Action International</td>
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<tr>
<td>HIV/AIDS</td>
<td>human immunodeficiency virus/acquired immune deficiency syndrome</td>
</tr>
<tr>
<td>HRC</td>
<td>UN Human Rights Council</td>
</tr>
<tr>
<td>HRCee</td>
<td>Human Rights Committee</td>
</tr>
<tr>
<td>HRCion</td>
<td>UN Commission on Human Rights</td>
</tr>
<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
</tr>
<tr>
<td>ICERD</td>
<td>International Convention on the Elimination of All Forms of Racial Discrimination</td>
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<tr>
<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
</tr>
<tr>
<td>ICJ</td>
<td>International Court of Justice</td>
</tr>
<tr>
<td>IFPMA</td>
<td>International Federation of Pharmaceutical Manufacturers &amp; Associations</td>
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List of Abbreviations

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<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tr>
<td>IIPA</td>
<td>International Intellectual Property Alliance</td>
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<tr>
<td>ILC</td>
<td>International Law Commission</td>
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<tr>
<td>IP</td>
<td>intellectual property</td>
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<tr>
<td>IPRs</td>
<td>intellectual property rights</td>
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<tr>
<td>LDCs</td>
<td>least-developed countries</td>
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<tr>
<td>MFN</td>
<td>most-favoured nation treatment principle</td>
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<tr>
<td>NCE</td>
<td>new chemical entity</td>
</tr>
<tr>
<td>NDP</td>
<td>National Drug Policy</td>
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<tr>
<td>NGO</td>
<td>non-governmental organisation</td>
</tr>
<tr>
<td>NODPSP</td>
<td>National Objectives and Directive Principles of State Policy (Uganda)</td>
</tr>
<tr>
<td>PhRMA</td>
<td>Pharmaceutical Research and Manufacturers of America</td>
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<tr>
<td>PIL</td>
<td>Public Interest Litigation</td>
</tr>
<tr>
<td>PMA</td>
<td>Pharmaceutical Manufacturer’s Association</td>
</tr>
<tr>
<td>R&amp;D</td>
<td>research and development</td>
</tr>
<tr>
<td>SADC</td>
<td>Southern African Development Community</td>
</tr>
<tr>
<td>TAC</td>
<td>Treatment Action Campaign</td>
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<tr>
<td>TB</td>
<td>Tuberculosis</td>
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<tr>
<td>TRIPS</td>
<td>Agreement on Trade-Related Aspects of Intellectual Property Rights</td>
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<tr>
<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
</tr>
<tr>
<td>ULRC</td>
<td>Uganda Law Reform Commission</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>UNICEF</td>
<td>United Nations Children’s Fund</td>
</tr>
<tr>
<td>USTR</td>
<td>United States Trade Representative</td>
</tr>
<tr>
<td>VCLT</td>
<td>Vienna Convention on the Law of Treaties</td>
</tr>
<tr>
<td>WHA</td>
<td>World Health Assembly</td>
</tr>
<tr>
<td>WHO</td>
<td>World Health Organisation</td>
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<tr>
<td>WIPO</td>
<td>World Intellectual Property Organisation</td>
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<tr>
<td>WTO</td>
<td>World Trade Organisation</td>
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