Thought Leadership *Reflections*
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Compulsions:
Prospects for Mandatory Licensing of Patents in Nigeria

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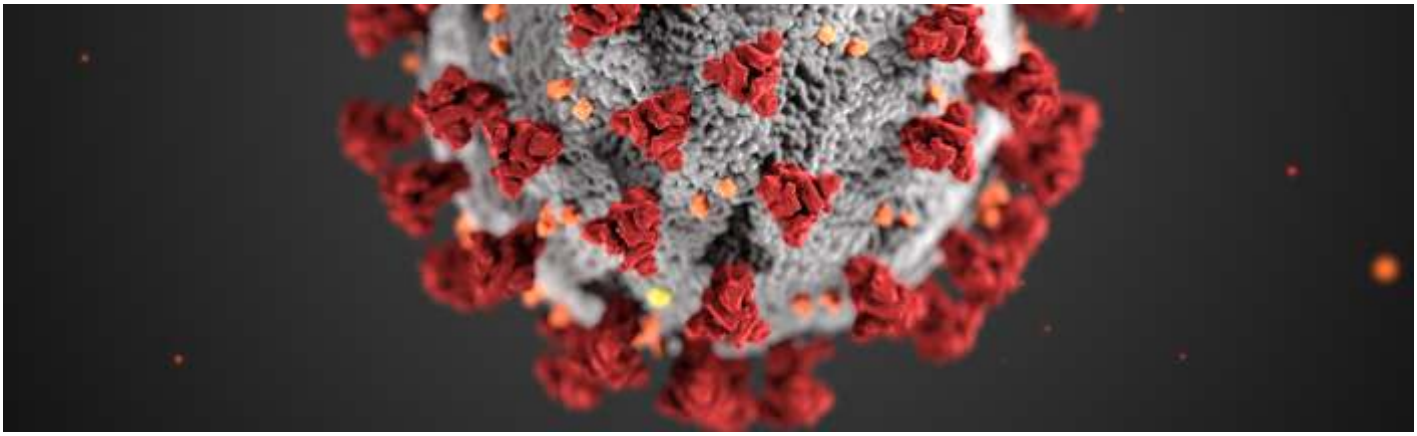
Introduction

The recent surge in the number of confirmed cases of COVID-19 in India has furthered the discussions on the propriety of exclusive patent rights in cases of national or global emergencies impacting public health and safety.[1] The emergence of the virus in late 2019 and 2020 has led multilateral efforts involving, many pharmaceutical companies, research institutes and governmental agencies to venture into research and development of vaccines to stem the onslaught of the virus. Many vaccines which have successfully rolled off testing and production, are already being administered to citizens worldwide;[2] also, various vaccine diplomacy issues have come to the fore.

Going down history lane, the COVID-19 pandemic is not the first major public health challenge that has forced the world into rethinking the exclusivity rights of the patent holders. The early years of the 21st century have been filled with the conversation on relieving patentees of their rights on drugs for HIV/AIDS, tuberculosis, etc. to ensure that majority of the people are treated. As the battle for inoculating the world continues, there has been a call for the waiver of the intellectual property (IP) rights to allow (third party) local production from different countries to deepen vaccination which is currently low.[3]



1. W. A. Reinsch and Sanvid Tuljapurkar, ***'Compulsory Licensing: A Cure for Distributing the Cure?'***, *Centre for Strategic & Internatonal Studies, 08.05.2020:* https://www.csis.org/analysis/compulsory-licensing-cure-distributing-cure (accessed 27.05.2021).
2. As at 3rd June 2021, seven vaccines had been finalised, and were already being utilised; whilst several others are still in either production or approval stage. See World Health Organisation (WHO), ***'Status of COVID-19 Vaccines Within WHO EUL/ PQ Evaluation Process'***, *03.06.2021:* https://extranet.who.int/pqweb/sites/default/files/documents/Status%20of%20COVID-19%20Vaccines%20within%20WHO%20EUL-PQ%20 evaluation%20process%20-%203%20June%202021.pdf (accessed 07.06.2021).
3. As at 7th June 2021, over 2 million of the 200 million plus population in Nigeria has received at least one vaccine dose. See Our World in Data, ***'Coronavirus (COVID-19) Vaccinations'***: https://ourworldindata.org/covid-vaccinations?country=NGA (accessed 25.05.2021). Meanwhile, India and South Africa had on 2nd October 2020 applied for the waiver of intellectual property rights to combat COVID-19 pandemic. See Communication from South Africa and India titled: ***'Waiver from Certain Provisions of the TRIPS Agreement for the Prevention, Containment and Treatment of COVID-19'*** to the World Trade Organisation: https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/IP/C/W669.pdf&Open=True (accessed 31.05.2021). From the Communication, both countries had applied that *"intellectual property rights such as patents, industrial designs, copyright and protection of undisclosed information do not create barriers to the timely access to affordable medical products including vaccines and medicines or to scaling-up of research, development, manufacturing and supply of medical products essential to combat COVID-19'* and that *'the waiver should continue until widespread vaccination is in place globally, and the majority of the world's population has developed immunity hence we propose an initial duration of [x] years from the date of the adoption of the waiver."* See also Simeone McCarthy, ***'China Backs IP Waiver for Coronavirus Vaccines'***, *South China Morning Post, 17.05.2021:* https://www.scmp.com/news/china/science/article/3133831/china-backs-ip-waiver-coronavirus-vaccines (accessed 07.06.2021), Miriam Berger, ***'WHO Head Pushes for Waiver of Some Intellectual Property Rights for Coronavirus Vaccines, In Bid to Broaden Access'***, *The Washington Post, 05.03. 2021:* https://www.washingtonpost.com/world/2021/03/05/tedros-who-covid-vaccines-rights/ (accessed 07. 06.2021).

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While this call has been met with contentions from different parties,[4] another option that can be explored is to adopt compulsory licensing (CL).

CL is a licence granted by the government to a third party to use the patented invention to restrict the rights of the patentee to stop the abuse/misuse of the rights by the property holder (the patentee) and to prevent the negative effect of such action on the public.[5] Once CL is granted to an applicant, it gives him (the applicant), the right to legally carry out the invention or innovation without being liable. CL had become a tool for easy access to HIV/AIDS drugs in Thailand, Mozambique, Zambia, Zimbabwe and Malaysia (for example in Malaysia, CL led to the reduction of the cost of three patented medicines by 81% and in increase of treatment capacity from 1,500 to 4,000).[6]

Coming home to Nigeria, the ***Patents and Designs Act (PDA)***[7] provides for CL which can be granted by an application to the Federal High Court (FHC) pursuant to ***section 251(1)(f) 1999 Constitution of the Federal Republic of Nigeria (as amended) (1999 Constitution)***. This article, therefore, seeks to examine how CL works in Nigeria, the conditions to be fulfilled by an applicant and the procedure for the grant of CL. This article concludes with the analysis of some of the gaps in the procedure for the grant of CL, with discussions on the treaties having an impact on CL.

Patents in Nigeria: The Concept, Rights and Grants

Nigeria's first legislation on Patents were introduced in 1900 to the Lagos Colony and the Southern Protectorate through the ***Patent Ordinances No. 27*** and ***No. 17 of 1900***. The Northern Protectorate in 1902 equally had the ***Patent Proclamation of 1902***, and then the ***Patent Ordinance 1916*** which repealed all the existing laws following the amalgamation of the Southern and Northern Protectorates in 1914. Thereafter, there was the ***Registration of UK Patent Ordinance*** in 1925 and the ***Patents (Limitation) Decree of 1968 (Decree)*** which replaced the former. It is the ***Decree*** that has now been adapted into the ***PDA***.[8]

Patent denotes a monopoly right in respect of an invention.[9] It is the grant to a person for an invention for a limited time to prevent any other person from exploiting such an invention without the consent of the person.[10] Unlike copyright that is vested in the author whether registered or not, patents must be registered to be enforceable, and must satisfy the conditions in the ***PDA*** to wit, it: is new and a result from the inventive activity which is capable of industrial application; or constitutes an improvement upon a patented invention.[11]

4. BBC News, ***'Covid: Germany Rejects US-backed Proposal to Waive Vaccine Patents'***, *06.05.2021:* https://www.bbc.com/news/world-europe-57013096 (accessed 07.06.2021).
5. N. R. Subbaram, ***'Subbaram on Patent Law, Practices & Procedures'***, *Wadhwa and Company 2007, p. 316*
6. WHO, ***'Access to Affordable Medicines for HIV/AIDS and Hepatitis: The Intellectual Property Rights Context'***, *2014, pp. 4-5:* apps.who.int/iris/bitstream/handle/10665/204741/B5144.pdf?sequence=1 (accessed 17.05.2021).
7. ***Cap. P2, Laws of the Federation of Nigeria (LFN), 2004.***
8. Nneamaka Ifunanya Vanni, ***'Narratives and Counter-Narratives in Pharmaceutical Patent Law Making: Experiences from 3 Developing Countries'***, *University of Warwick, (Unpublished Ph.D Thesis), September 2016, pp. 184-192:* http://wrap.warwick.ac.uk/90970/1/WRAP_Theses_Vanni_2016.pdf (accessed 27.05.2021).
9. ***'Halsbury's Laws of England'***, *(Butterworths, 4th ed., (1994), Vol. 35), p. 150.*
10. Chudi Nwabachili, ***'Intellectual Property Law and Practice in Nigeria'***, *(Malthouse, 2017), p.139.*
11. ***Section 1(1) PDA.***

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The right of the patent is granted to *the statutory inventor*, that is, the first to file notwithstanding the statutory inventor, not being the true inventor or having a valid claim by foreign priority.[12] However, the true inventor is entitled to be named in the patent whether or not he is the statutory inventor. Once a patent is granted and while it lasts for a period of twenty (20) years subject to payment of annual fees,[13] it precludes any other person from making, importing, selling or using the product where it is granted in respect of a product, and where it is granted in respect of a process, prevents anyone from applying the process or doing, in respect of the product obtaining directly by means of the process.[14]

Compulsory License of Patents in Nigeria

Though ***section 11 PDA*** provides for CL and official use of patents for government agencies, the discussion in this article is limited to CL. However, there are similarities between a CL and a grant of patents for official use (which includes the period of emergency) and this is that both give the third party the right to exploit the right of the patent without any liability imposed on such third party.

CL can be critical, with direct life-saving impact by whittling down healthcare costs or widening access to essential drugs.[15] CL can both be a shield and a sword. Depending on the willpower of the State, CL can be used to infringe the right of a patentee and grant CL to a third party, effectively making the investment climate harsh, for the patentee. Thereafter, a third party, which may be favoured by the State can apply for a CL. In another way, CL can be used to either mount pressure on the patentee to establish manufacturing facilities and consequently speed up innovation and economic inputs or lead to the reduction of the price, since there will be larger demand even if the monopoly profits will be reduced.[16] CL can equally be used to break the monopoly and allow a free entry market operation.

As it stands in Nigeria, there appears to be no record of a grant of CL since the enactment of the ***PDA***. However, the closest scenario where a third party infringed a patentee's right was in ***Rhone - SA Poulenc and May & Baker v. Lodeka Pharmacy***.[17] The trial court in resolving the dispute refused the the Defendant's argument that the infringement of the patents of the Plaintiffs was in furtherance of the use by the government on the authority of ***section 46(1) United Kingdom (UK) Patents Act of 1949.***[18] In this case, the Federal Ministry of Health permitted the Defendant to supply the patented drug for the Ministry. The claimant's contention that the ***UK Patents Act (UKPA)*** does not apply to Nigeria was upheld by the trial court.

12. ***Section 2 PDA.***
13. ***Section 7 PDA.***
14. ***Section 6(1) PDA.*** See also Edward Osike, ***'Rights': Patent Infringement Issues in Nigeria***', *LeLaw Thought Leadership Insights, July 2019:* https://lelawlegal.com/add111pdfs/Edward_-_Patent_Infingement_in_Nigeria.pdf (accessed 31.05.2021).
15. Dianne Nicol and Olasupo Owoeye, ***'Using TRIPS flexibilities to Facilitate Access to Medicines'***, *Bulletin of the World Health Organisation, 18.04.2013:* https://www.who.int/bulletin/volumes/91/7/12-115865/en/ (last accessed 28.05.2021).
16. William Cornish and David Llewelyn, ***'Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights'***, *(Sweet & Maxwell, 2007), p.300.*
17. ***(1965) LLR 9.***
18. *"Notwithstanding anything in this Act, any Government department, and any person authorised in writing by a Government department, may make, use and exercise any patented invention for the services of the Crown in accordance with the following provisions of this section."*

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CL as provided in ***Part I, First Schedule, PDA*** can be granted to a person. Though ***Part I*** does not define "*person*" as it did under ***Part II*** to include *the Government or a Ministry*, it is believed that "*person*" will include either natural or artificial person(s).[19] CL is granted whether, four years after filing for the patent, or three years after the grant of the patent, whichever period last expires,[20] provided one or more of the grounds stated under ***Paragraph 1, Part I, First Schedule, PDA*** can be proven. It is prescient, in examining these grounds to make recourse to the interpretative resources around the ***UKPA 1977***[21] like the ***Halsbury's Law of England***[22] given the similarity of its provisions with the ***PDA***. These grounds include, that:

i. the patented invention, being capable of being worked in Nigeria, has not been so worked

The applicant for the CL must establish that there has not been any working of the patent since it has been granted.[23] Thus, an invention will be deemed not capable of being so worked where the special tools or skilled labour needed are to be imported.[24]

ii. the existing degree of working of the patented invention in Nigeria does not meet on reasonable terms, the demand for the product[25]

The applicant here must be able to establish that the demand is existing demand, and not one which he hopes to create upon grant.[26] The demand can equally be an export demand.

iii. the working of the patented invention in Nigeria is being hindered or prevented by the importation of the patented article[27]

CL can be used as a tool to allow local production of the invention or innovation notwithstanding that there is a continued importation of the patented article. Since a patent restricts carrying out the same invention or innovation, the grant or attempt to grant CL may force the patentee to either meet up with production or agree on licensing with the third party.

iv. by reason of the refusal of the patentee to grant licenses on reasonable terms, the establishment or development of industrial or commercial activities in Nigeria is unfairly and substantially prejudiced[28]

This ground is however different from the '*Fair, Reasonable and Non-Discriminatory (FRAND) Licensing*' in that the FRAND is a voluntary commitment by the licensor to negotiate on FRAND terms with the licensee whereas CL forces the licensor to enter into license arrangement where there is no middle point for both parties.[29]

To be granted a CL, such a person aside from the grounds stated above must satisfy the court that the patentee has refused to grant him a license on a reasonable term and within a reasonable time and that there is a satisfactory guarantee to the court that he will remedy the deficiencies (or satisfy the requirements) which gave rise to his application.[30] The ***PDA*** did not provide for what will be reasonable or satisfactory as the case may be. What is '*reasonable*' has been defined by *Niki Tobi, JSC* as '*fair, proper, just, moderate, suitable under the circumstances.*'[31]

Procedure for Grant of Compulsory License in Nigeria

The ***PDA*** by ***Paragraph 1, First Schedule*** provides that such an applicant "*may apply to the court for the grant of a compulsory license.*" The use of "may" gives the

19. ***Section 18 Interpretation Act, Cap. I23, LFN 2004*** defines "person" as "*any body of persons corporate or unincorporated.*"
20. This period stated is subject to the order of the Minister in the Federal Gazette and therefore, CL can be granted or before the expiration of stated period, where such order is vital for the defence or the economy of Nigeria or for public health. See ***Paragraph 13, Part 1, First Schedule, PDA.***
21. It should be noted that there has been series of amendments to the ***UKPA*** which have led to a distinction between grant of CL where the patentee is a World Trade Organisation (WTO) proprietor (i.e. a national/resident of, or having operational presence in a WTO Member-State) and patentee is not a WTO proprietor. The Nigerian provisions on CL have similarity with ***section 48B UKPA*** which regulates the grant of CL where the patentee is not a WTO proprietor.
22. ***'Halsbury's (supra)*** *pp. 259-262.*
23. *Cf.* with ***section 48B(1)(a) UKPA*** where it was further qualified to include "*or is not so being worked to the fullest extent that is reasonably practicable.*" The implication is that it will require the applicant to establish what demand might be expected, and the extent to which to which is not met. See ***Kamborian's Patent [1961] RPC 403.***
24. See ***Johnson's Patent (1909) 26 RPC 52; Wardwells Patent (1913) 30 RPC 408.***
25. There is a further qualification of the grounds under ***section 48B(1)(b)(ii) UKPA*** which includes that such patented invention "*is being met to a substantial extent by importation from a country which is not a member State.*"
26. ***Re Cathro's Application (1934) 51 RPC 75 at 82, 83.***
27. ***Section 48B(1)(c) UKPA*** further qualifies this ground by distinguishing where the importation is with respect to a product or a process which led has led to a product obtained directly by means of the processs or to which the process has been applied.
28. The Nigerian provision only provides for where due to the non-grant of license on reasonable terms by the patentee, the establishment or development of industrial or commercial activities in Nigeria is unfairly and substantially prejudiced. However, ***section 48(1)(d)(i)*** and ***(ii) UKPA*** further provides for two additional instances where CL can be granted for lack of licensing on reasonable terms. These are where the market for the export of any of the patented product is not being supplied in the UK; or where the working of another patented invention which makes substantial contribution to the art, will be hindered or prevented.
29. Srividhya Ragavan, *et al*, ***'FRAND v. Compulsory Licensing: The Lesser of the Two Evils'***, *Duke Law & Technology Review, Vol. 14, No. 1, 84, p. 84.*
30. ***Para 5, First Schedule, PDA.***
31. ***Rinco Construction Co. Ltd. v. Veepee Industries Ltd. & Anor (2005) LPELR -2949 (SC), 14-15 G-A.***

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applicant the option to first approach the court or go through the Registrar as provided under the ***Patents Rules (PR)***. This is because the ***PDA***, being primary legislation supersedes the ***PR*** - a subsidiary legislation pursuant to ***section 30 PDA;*** therefore making the direct approach to the court still valid. Where the applicant opts to approach the court for the grant of CL, such application will be begun *vide* ***order 53, rule 1(2) Federal High Court (Civil Procedure) Rules 2019 (FHC Rules)*** by the use of originating motion after which the Registrar of Patent will be notified.

Meanwhile, where the applicant opts to approach the Registrar of Patents rather than or before the court, the applicant is to apply to the Registrar using *Form 7 PR* and accompanied with an unstamped copy and a statement in duplicate which will set out the nature of the applicant's interests and the facts upon which he is establishing his case/application.[32] Thereafter, the Registrar will inform the patentee for a fair hearing. The patentee may oppose the application for the license by lodging a statement that sets out the grounds on which he is opposing the application and the applicant has the right to respond. Subsequently, the patentee and the applicant may, pursuant to ***Rules 38*** and ***39 PR,*** lodge evidence in answer and deliver to the applicant, a copy thereof after which the applicant will be notified to apply to the court within two months for an order granting CL to the applicants on the grounds stated above.[33]

Flowing from the later procedure, the bureaucracy is needless and time-demanding. This is confirmed by ***Rule 41, PR*** which provides that the Registrar shall inform the applicant upon completion of evidence and thereafter the case will be deemed to stand for the determination of the court. The implication of this is that resort is had to the first procedure and all the steps applicable, will therefore follow. From the practice of the use of originating motion, such a respondent (the patentee) will ordinarily be entitled to still "counter" such depositions contained in the accompanying affidavit to such a motion. This no doubt lengthens the time for the application of CL.

The ***PDA***, ***PR*** and the ***FHC Rules*** should rather be amended to allow either the Registrar to grant the license and give the patentee the right of appeal within a limited period as applicable under ***section 49(1) UKPA*** or allow the Registrar refer the application alongside the already filed evidence as affidavits before the court without giving the parties the right to file any process before the court.

Nigeria and Treaties on Compulsory License

There are treaties that Nigeria has ratified, that regulate CL worldwide. The major challenge with all these treaties is their application in light of the provision of ***section 12 1999 Constitution*** which provides that treaties be domesticated by enactment into law by the National Assembly.[34] Some of these treaties include the ***Trade Related Aspects of Intellectual Property (TRIPS),***[35] ***Doha Declaration 2001*** (the amendment of TRIPS in 2005 implemented the ***Doha Declaration)***,[36] and the ***Protocol Amending TRIPS 2005(Protocol).***[37]

32. ***Rule 36, PR.***
33. ***Rule 42, PR.***
34. In the words of Vanni, "*as part of the Single Undertaking package, Nigeria signed up to and accepted the TRIPS Agreement when it acceded to the WTO. Being a developing country, Nigeria was given a 10-year transition period to phase into the TRIPS Agreement. However, even though the country was supposed to change its IP laws to be TRIPS-compliant in 2005, it has yet to do so. In fact, efforts by several foreign organisations such as the USTR, the WIPO, and the WHO to help the country bring its patent law into compliance with the TRIPS Agreement by 2005 were futile.*" Vanni, *(**supra**, see footnote 8), p. 191.*
35. The ***TRIPS*** was a result of the 'Uruguay Round' trade negotiations under the General Agreement (GATT). The Round eventually led to the establishment of the WTO and included the ***TRIPS*** Agreement, which significantly strengthens IP rights worldwide. See Donald P. Harris, ***'TRIPS' Rebound: An Historical Analysis of How the TRIPS Agreement Can Ricochet Back Against the United States'***, *Northwestern Journal of International Law & Business, 2004, Vol. 25, Issue 1, p.104.*
36. Nigeria has been a member of the ***Paris Convention*** since 1963, a member of the TRIPS by acceding to the WTO in 1995 and a member of the ***Patent Cooperation Treaty*** in 2005. See Nneamaka Ifunanya Vanni, *(**supra**, see footnote 8), p.192.*
37. The ***Protocol*** entered into force on 23 January 2017.

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Accordingly, ***Paragraph 5(b) Doha Declaration*** provides that *"each Member has the right to grant compulsory license and the freedom to determine the grounds upon which such licenses are granted."* The essence of the Doha Declaration was to introduce flexibilities in the ***TRIPS*** in other to overcome harsh IP barriers to accessing essential medicines such as HIV/AIDS, malaria and tuberculosis medications.[38]

Before the coming to force of the ***Protocol*** on 23 January 2017, ***Article 31(f) TRIPS*** had restricted the grant of CL to *"the supply of the domestic market of the Member authorizing such use."* The implication, therefore, was that Member States, most especially developing countries like Nigeria, were hit with a catch-22 situation considering their lack of manufacturing capacity and therefore denied access to these drugs. Therefore, ***Article 31bis*** the ***Protocol***[39] (which amended ***Article 31(f)***), offered a respite by allowing developing countries to issue CL to import those drugs.

From the above, it appears that despite the attempt of the World Trade Organisation to resolve the impasse surrounding CL, the problem still does not appear to have been solved. One of the challenges for the implementation of the ***Protocol*** was the length of time it took for the ***Protocol*** to come into force – 12 years. The second obstacle is the obligation it imposes on the Member States to effect changes in their laws to be able to explore this option under the ***Protocol.***

Patent laws are national and if there must be some form of concessions to allow CL, both the laws of the importing and exporting countries must be amended to allow the importation and exportation of the patented goods. The importing country[40] must therefore amend its laws to allow CL to be granted for imported goods while the exporting country equally does the same to allow exports. Another challenge is the '*reasonable commercial terms and conditions*' and '*reasonable period of time*' under ***Article 31(b) TRIPS,*** and '*adequate remuneration*' under ***Article 31(h) TRIPS*** (and retained under ***Paragraph 2 Annex to the Protocol***) required to be paid to the right holder, all of which were not defined by the treaty. The question is: *what will be the threshold in determining these conditions, considering the research and development that has been expended into the discovery and production of the patented article?*[41]

Considering the complexities that may arise from the grant of CL, other options like parallel imports (PI) or differential pricing strategy (DPS)[42] may be explored in case of extreme emergencies. PI, also called *gray-market imports are goods produced genuinely under protection of a trademark, patent, or copyright, placed into circulation in one market, and then imported into a second market without the authorisation of the local owner of the intellectual property right.*[43] Where the DPS is adopted, it implies that there are various prices for different countries, mostly between the developed and developing countries. The fixing of these prices will therefore depend on the economic situation of each of these countries. However, the challenge with this particular option is it may lead to PI wherein goods are bought at a country where the price is being lowered and sold at another where the cost is high.[44]

38. S. E. S. Murillo, ***'Fair or Fraud: Has the Protocol Amending TRIPS Flourished or Failed?'***, *Indiana Int'l & Comp. Law Review, 2017, Vol. 27, p. 195.*
39. Nigeria accepted ***the Protocol*** on 16 January 2017 and it entered into force on 23 January 2017. See ***'Protocol Amending the TRIPS Agreement'***, *Status of WTO Legal Instruments – 2021 Edition:* https://www.wto.org/english/res_e/booksp_e/sli_e/20tripsamendment.pdf (accessed 31.05.2021).
40. ***Para 13, Part 1, First Schedule, PDA*** already empowers the Minister through an order in the Federal *Gazette* amongst other things to *"permit importation"*.
41. Countries like Mozambique, Zambia and Indonesia have set a 2%, 2.5% and 0.5% royalty rates on AIDS drugs, respectively. See James Love, ***'Remuneration Guidelines for Non-Voluntary Use of a Patent on Medical Technologies'***, *World Health Organisation, Health Economics and Drugs, TCM Series No. 18, 2005:* https://www.who.int/hiv/amds/WHOTCM2005.1_OMS.pdf (accessed 31.05.2021).
42. Vitor Palmela Fidalgo, ***'Article 31bis of TRIPS: How Can African Countries Benefit From This Amendment?'***, *Mondaq, 15.08.2018:* https://www.mondaq.com/patent/728020/article-31bis-of-trips-how-can-african-countries-benefit-from-this-amendment (accessed 31.05.2018).
43. Keith E. Maskus, ***'Parallel Imports in Pharmaceuticals: Implications for Competition and Prices in Developing Countries'***, *Final Report to World Intellectual Property Organisation, April 2001:* https://www.wipo.int/export/sites/www/about-ip/en/studies/pdf/ssa_maskus_pi.pdf (accessed 31.05.2021).
44. See P. Danzon, ***'Differential Pricing for Pharmaceuticals: Reconciling Access, R & D and Intellectual Property'***, *CMH Working Paper Series, Paper No. WG2:9, December 2001:* https://core.ac.uk/download/pdf/132270628.pdf (accessed 31.05.2003). Regarding the implication of flooding the markets with generic drugs (for cancer), a commentator has observed that, *"rather than being prescribed, doctors are redirecting struggling patients to marketers of generic version of the drugs sourced cheaper from India, a top exporter of pharmaceutical drugs in the world. Price differentials have increasingly placed generic drugs atop the prescription preference of physicians at the expense of over-the-counter or branded drugs."* See Temitayo Ayetoto, ***'Generic Drugs' Cartel Cripples Nigeria's Cancer Treatment Subsidy'***, *Business Day, 07.06.2021, p.2.*

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Conclusion

Just like the fundamental human rights as contained in ***Chapter 4 1999 Constitution*** can be derogated in case of emergencies and some other prevailing circumstances, IP rights should equally be curtailed where same would be antithetical to the economic progress of the State or the general well-being of the public. Though the above exposition appears to have dealt more with CL for public health cases, that does not mean it will always have to do with health-related matters. Considering the benefits of CL, it can be used to open up the economy for more productive activities, most especially where the patent is being used to furtherance monopoly or other anti-competitive objectives, exemplified unnaturally high prices.

Nigeria, can therefore at this point re-evaluate her laws on CL, widen its scope to address many areas not covered as compared to the ***UKPA***, and increase her focus on the technological advancement and research to continue to develop homegrown solutions tonational challenges.[45] However, it is equally necessary to state that though CL may be part of the options towards local production where rights are not waived; many other factors are involved in production generally, vaccine inclusive and these include trade secrets, technical know-how, technological advancements etc which may make the grant of CL ineffective on the long run. Thus, rather than the grant of CL, the government can through diplomacy, investment guarantees and tax waivers, amongst others win such a patentee into either production or technology transfer, thereby creating a win-win situation for all parties involved.

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45. An example of this is a National Agency for Food and Drug Administration and Control (NAFDAC)-approved herbal remedy for COVID-19. See Shina Abubakar, ***'Ooni Unveils Local Covid-19 Remedy Approved by NAFDAC'***, *Vanguard*, 25.02.2021: https://www.vanguardngr.com/2021/02/ooni-unveils-local-covid-19-remedy-approves-by-nafdac/ (accessed 07.06.2021).

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