

## ***Motsoaledi: Big pharma's 'satanic' plot is genocide***

HEALTH Minister Aaron Motsoaledi has accused a group of multinational pharmaceutical companies active in South Africa of conspiring against the state, the people of South Africa and the populations of developing countries - and of planning what amounts to mass murder. "I am not using strong words; I am using appropriate words. This is genocide," Motsoaledi told the Mail & Guardian on Thursday, in response to a plan he described as a conspiracy of "satanic magnitude" - a plan he called on all South Africans to fight "to the last drop of their blood". The plan in question is a nine-page document obtained independently this week by the Mail & Guardian and the Department of Health, blandly titled "Campaign to Prevent Damage to Innovation from the Proposed Draft National IP Policy in South Africa".

But the contents have Motsoaledi spitting fire and non-governmental organisations (NGOs) deeply concerned, and its disclosure will likely lead to open war between the various parties - a conflict that all sides believe will have inevitable consequences for the long-term health and wealth of a significant fraction of the world's population. The war has been brewing for years, but was brought to a head in September last year when the Department of Trade and Industry published a draft framework for a new policy on intellectual property (IP), including patents over life-saving drugs. Much to the delight of organisations such as Médecins Sans Frontières (MSF), the government's draft policy focuses heavily on health, and on reform in the treatment of medical patents. Drug companies with local operations were appalled and, evidence suggests, almost immediately started work on a plan to change the direction of the policy radically. Instead of weaker protections for valuable drug patents, they sought stronger protection. By last week that plan had become concrete. The drug companies' umbrella body, the Innovative Pharmaceutical Association of South Africa (Ipsa), selected a Washington, DC-based, lobbying firm Public Affairs Engagement (PAE) to lead the charge against the policy. PAE, in turn, put forward a proposal on how it would effect radical changes to the policy. And it is that plan - apparently yet to be implemented - that had Motsoaledi incandescent with anger. "This document can sentence many South Africans to death," he said. "That is no exaggeration. This is a plan for genocide."

In coming months, the document shows, PAE intends to launch a persuasive campaign throughout Africa and in Europe. It does not speak of genocide or of withholding affordable drugs from the people who most need them. Instead, it is aimed at indirectly convincing the South African government to strengthen, rather than weaken, patent protection for crucial drugs. Although the plan contains no hint of crude attempts to buy influence directly, and comes nowhere near suggesting means illegal or corrupt, it contains elements sure to raise eyebrows. These include:

- Setting up a "coalition" with an innocuous name such as "Forward South Africa", which will be directed from Washington while appearing to be locally run;
- Encouraging other African countries, especially Rwanda and Tanzania, to help to convince South Africa that it could lose its leadership role on the continent should it push ahead with the draft policy;
- Distracting NGOs from their own lobbying by changing the nature of the debate; and,
- Commissioning "independent" research and opinion pieces for broad public dissemination - but vetting all such material before publication to ensure it fits the message.

But the net effect, Motsoaledi said, would be to put corporate profits before health - not only in South Africa, but also around the globe. "This is using South Africa as an entry point, but this is an attack on Brazil, an attack on India ... an attack on China, Russia and the whole developing world," he said.

## **ARV expansion**

Should the campaign succeed, he said, South Africa would not be able to afford a planned expansion of its antiretroviral (ARV) provision to people living with HIV. Drugs effective against cancer and tuberculosis would remain too expensive to do any good, and other countries (such as 14 African countries intent on following South Africa's lead on ARVs) would suffer likewise. Motsoaledi vowed that no amount of lobbying would change the minds of Cabinet Ministers, but said that was not the intent of the PAE plan. "They are not hoping to influence government; they are hoping to influence society to turn against government. If you read carefully what they are saying, they want to prove to patients that the lack of access to medicine has nothing to do with IP but everything to do with the incompetence of the government." Such an approach, he said, sought to make HIV-positive people revolt. An argument that weak intellectual property protections would "chase away investors", meanwhile, was aimed at a large portion of the country, the Minister said. "Anyone who is unemployed, and there are millions of them, can get into this war," he said.

## **Mobilising voices**

The argument that PAE proposes to put forward on behalf of the drug companies is somewhat less pointed. "Mobilise voices inside and outside South Africa to send the message that the proposed IP policy threatens continued investment and thus economic and social wellbeing," it says in a segment of the document summarising the strategy and message. "This mobilisation will occur through an energetic campaign, which will feel like a political campaign." But that campaign would have elements that could, at best, be seen as deceptive. Forward South Africa (FSA), the proposed public face of the campaign, for instance, would be "led by a visible South African, most likely a respected former government official, business leader or academic". But, at the same time, it would be "directed by staff from Public Affairs Engagement and PAE's South African partner". Nothing in the document suggests that the funding for FSA – estimated at \$100 000 from Ipsa and another \$450 000 from an American association of pharmaceutical companies - would be disclosed. Ipsa, asked whether the FSA campaign would in effect be covert, this week issued a carefully worded written response. "We would encourage all interested parties to be open in their support both for and against positions adopted in the debate over policy direction and choices," said chief operating officer Val Beaumont. "By its nature, any coalition conducting public advocacy would be acting in the public domain, with its positions transparent and open to full public debate." That is unlikely to be universally accepted. MSF this week described the planned campaign as a "covert attempt by the multinational pharmaceutical companies to spend extraordinary amounts of money to interfere in South Africa's legislative process". The Treatment Action Campaign said the entire attempt is "very suspicious". Although the first phase of the plan was due to be implemented this week, Ipsa said it was still evaluating many proposals. "While we have not contracted outside parties to assist us, Ipsa is considering various communication strategies and proposals to augment our ongoing policy advocacy and communications outreach concerning the draft policy," Beaumont said.

PAE's proposed local partner, lobbyist Abdul Waheed Patel from the Cape Town-based Ethicore Political Consulting firm, said his company had been approached by PAE and had "responded positively", but had not yet been appointed. Both the South African Institute for Race Relations and the Free Market Foundation, cited as possible constituents of the "Forward South Africa" front, said they were aware of lobbying but not about the specific plan - and would not be willing pawns in it. "We act independently and do not join groups if that means adopting some form of party line," the foundation said. PAE did not respond to detailed questions about its involvement in South Africa or the plan to influence the government's IP policy on pharmaceuticals. Instead, it issued a short statement that punted the need for a thorough discussion of policy on intellectual property. PAE is headed by former US ambassador James

Glassman, who held several high-ranking government positions before spending four years as the executive director of the George W Bush Institute, where he was involved in building a library and museum dedicated to the former president. Although it is understood that Ipasa set out to find a consultancy to advance its agenda, PAE said it had come up with the idea itself. "When ambassador Glassman learned in September of the proposed IP policy in South Africa, he contacted potential clients," the PAE statement read. "As of today [Wednesday], PAE has not been engaged by any client for an education campaign in South Africa."

Motsoaledi, however, seems unlikely to wait for such a contract to be entered into. Although organisations such as MSF, the TAC and generic medicine manufacturers said they could not match the resources of the pharmaceutical industry, the health minister pledged to throw the weight of the government behind a counter-campaign of its own. "We will resort to public engagement," he said. "We will say in public: 'These are the conspirators.'" He said his department will also call on companies, business associations, academics, politicians and the media to disavow the PAE plan publicly.

#### **The policy that has the drug companies spooked**

On September 4 2013, the Trade and Industry department published a long-awaited draft of a national policy on intellectual property in the Government Gazette. To the casual reader, it was a fairly standard example of boring bureaucratic process. Read from the perspective of a multinational drug company, it was a nightmare. "The IP [intellectual property] draft is written in vague language, but there is no doubting its intent," summarised Washington-based lobby group Public Affairs Engagement in its plan to reverse the policy. "It justifies a weak IP regime that allows the government to abridge intellectual property rights that are well established in the developed world. The health section of the draft takes dead aim at innovative pharmaceutical companies." That analysis is well founded. Though the policy framework deals with a wide range of intellectual property and its application to everything from agriculture to science, it dwells on the issue of access to medicine at almost every turn. It is suspicious of multinational companies and the multilateral organisations sympathetic to them, encourages seeking advice from non-governmental organisations rather than developed countries, and urges policymakers to put the interests of consumers first, rather than the interests of intellectual property "producers". In a framework for policy, the department notes and recommends, among other things, that:

- Provision should be made for the compulsory licensing of crucial drugs at the lower of two typical rates of payment. This would allow the state to assign the right to make a drug to a third party with only limited compensation to the owner;
- Provision should be made for the parallel importation of drugs. This denies drug companies the opportunity to charge more for a drug in South African than elsewhere in the world because it could be imported from the lower-price territory, whether the patent owner approved or not;
- Patents for drugs should be conditional on an examination to ensure that the drug is new or innovative, and should not be automatically granted;
- Generally, "patent flexibility" for medicine should be made a matter of law;
- The holders of intellectual property rights, such as drug companies, should be encouraged to protect their own rights rather than depending on state institutions, such as the police or customs, to do so; and,

- South Africa should seek to influence the region, and the world, to move towards its vision of intellectual property protection.

The draft does not yet have any status as policy, and was open for public comment. To what extent those comments, including submissions from pharmaceutical companies, may sway the department is not yet known. The department was this week still processing responses. But the local subsidiaries of drug companies are taking no chances on that score. "Without a vigorous campaign, opponents of strong IP will prevail," wrote the American lobbyists hired to launch a counter-campaign, "not just in South Africa, but eventually in much of the rest of the developing world."

*Phillip de Wet: Mail & Guardian, 17 January 2014*