**Brazil’s Supreme Court decision to amend national patent law could break lengthy monopolies on lifesaving medicines**

*Rio de Janeiro, 6 April 2021* – This week the Brazilian Supreme Court of Justice is expected to deliver a potentially groundbreaking verdict on the constitutionality of a provision in the country’s intellectual property (IP) law allowing patent term extensions (a single paragraph of article 40 in Brazil’s IP law). If this provision is found unconstitutional and removed, it will serve as a progressive step by the judicial system in Brazil towards safeguarding access to affordable medicines for all, preventing abusive patenting practices that keep the prices of lifesaving medicines artificially high for long periods of time, said the international medical humanitarian organisation Doctors Without Borders (MSF).

Brazil adopted the provision of patent term extensions in its IP law in 1996, leading to automatic and unlimited extended periods of patent protection beyond the international standard set by the World Trade Organization (WTO) TRIPS agreement that allows patents to last for 20 years from the date the patent application is filed. In addition to granting patents for a duration of the minimum of 20 years after filling, this provision in Brazil’s IP law guarantees an additional minimum of 10 years of patent protection from the date the patent is granted. As most of the patent applications undergo examination for more than 10 years in Brazil, patent-holding pharmaceutical corporations presently benefit from this provision by availing extra years of a monopoly, allowing them to charge artificially high prices and hinder access to more affordable alternatives.

Currently, more that 70% of pharmaceutical patents already granted will last longer than 20 years, and more than 80% of pharmaceutical patents under examination can follow the same route.

As a result of this provision, several lifesaving drugs are under extended monopoly protection in Brazil – with prices several times higher than international reference prices – including raltegravir for HIV treatment, recombinant liraglutide for diabetes, and tocilizumab for rheumatoid arthritis and potentially COVID-19. Bedaquiline, the backbone of drug-resistant tuberculosis treatment, will be under monopoly in Brazil until 2028, while in other countries the patent will expire in 2023.

“The current provision of extending patent terms threatens the sustainability of the universal healthcare system that so many Brazilians rely upon to stay healthy and alive,” said Felipe de Carvalho, MSF's Access Campaign Coordinator in Brazil. “By rendering this provision unconstitutional, the Supreme Court would not only ensure access to medicines needed now for many life-threatening illnesses, but would also safeguard access to potential treatments that will be needed to tackle the COVID-19 pandemic. We truly hope our judicial system will take the right step in prioritising people’s health over corporate financial interests.”

For more than a decade, MSF has advocated about the negative effects of harmful IP provisions on access to medicines in national laws and free-trade agreements. A [MSF study](https://doi.org/10.1186/s40545-019-0198-6) on the impact of Supplementary Protection Certificates (SPC), a similar mechanism to patent term extensions, on access to medicines in the European Union showed that the pharmaceutical industry does not need the additional years of IP exclusivity to recoup claimed investments in research and development (R&D). On the contrary, patent term extensions served to sustain high prices of medicines and restrict competition.

“We have witnessed closely how generic production enabled steep price reductions of HIV drugs and the critical role played by countries like Brazil in scaling up access to treatment,” said Dr Antonio Flores, Infectious Disease Specialist in MSF Brazil. “But prices for newer lifesaving medicines – including third-line HIV drugs and treatments for tuberculosis, cancer, and many other diseases – are climbing rapidly. If pharmaceutical companies are allowed to continue extending their drug monopolies unchecked, access to lifesaving treatments will be blocked for millions of people in need.”

Over the last few decades, Brazil has played a leading role in important health agendas, including the 2001 WTO Doha Declaration on TRIPS, calling for improved access to medicines and the need to address barriers that emerge from dysfunctional patent systems. The Brazilian Supreme Court’s decision to remove this unlawful provision will not only reinforce Brazil’s international commitments but also facilitate meeting its domestic human rights obligations related to the right to health. The ruling for unconstitutionality will also foster a better environment for innovation by discouraging excessive patenting strategies and increasing the amount of knowledge in the public domain.

The decision will also set a positive precedent for many other countries presently undergoing patent law reformation, such as South Africa.

“Many of us around the world are anxiously waiting for this crucial decision from the Brazilian Supreme Court,” said Kate Stegeman, MSF's Access Campaign Advocacy Coordinator in South Africa. “As the South African government has yet to finalise essential and overdue draft amendments to our Patents Act that presently lacks adequate public health safeguards, this decision in Brazil could serve as a strong impetus for many of us also calling for patent law reforms. Removal of this harmful measure will be a major victory for people’s access to affordable medicines in South Africa and around the world.”