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The Kenya-UAE Trade Deal: Trading Away Our Health? What It Means for Your Health

TRIPS-plus rules in the Kenya-UAE trade deal could make life-saving medicines harder to get. Here's what you need to know.

Blog Article by Okania Pesa[1]

Imagine needing life-saving medicine, only to find it too expensive or simply unavailable—not because of a shortage, but because of rules in a trade deal. That's what's at stake in Kenya's proposed trade agreement with the United Arab Emirates. Buried in the fine print are provisions that could delay or block cheaper, generic medicines—undermining your right to health and making essential treatment unaffordable for millions of Kenyans

Safe and affordable medicines are critical to the enjoyment of the highest attainable standard of health as guaranteed in the Constitution. These rights are guaranteed under Kenya's Constitution (Article 43) and recognized in international law as essential for achieving Universal Health Coverage Kenya is among the countries that signed up on global commitments to have in place laws, policies, and plans to increase access to affordable, safe, effective and quality medicines, vaccines, diagnostics and other health products, including through the full use of TRIPS Agreement provisions and flexibilities.

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Why This Trade Deal Could Be Dangerous?

Kenya's proposed Free Trade Agreement (FTA) with the United Arab Emirates includes TRIPS-plus rules—provisions that go beyond what international law requires and could severely restrict access to affordable generic medicines.

At the heart of the concern are provisions that go far beyond global norms on intellectual property so-called TRIPS-plus rules. These rules may sound technical, but their impact is painfully simple: they delay the availability of affordable, generic medicines, and keep prices high.

TRIPS+:

These are rules in trade deals that give medicine companies stronger monopolies than global rules require—making cheaper generic drugs harder to access.

The Kenya–UAE Comprehensive Economic Partnership Agreement (CEPA) includes stricter Intellectual Property (IP) rules known as TRIPS-plus provisions. One such rule, found in Section 13.33(1), would require Kenya to introduce market exclusivity. This means that even after a patent has expired—or if no patent exists—a generic version of a medicine cannot be approved for sale without the consent of the original patent holder.

This creates an extra monopoly on top of the patent and delays the entry of cheaper, generic medicines into the market. It could also discourage local manufacturers from producing generics because they won't be allowed to sell them—even if they've already been approved by the drug regulator.

Market exclusivity also weakens important protections in international law, such as the Bolar exception. This rule currently allows generic companies to start preparing and testing medicines before a patent expires, so they can be ready to sell as soon as it does. Under CEPA, this won't be possible. So, even if a generic is registered and ready, it still cannot be sold until the exclusivity period ends.

Term	What it means	Why it's harmful
Market Exclusivity	Even without a patent, no one else can sell the medicine for years	Blocks generics
Patent Linkage	Generic approval tied to patent-holder's consent	Patent holder can delay or block generics

Section 13.33(2) goes even further by introducing patent linkage. This means Kenya's drug regulator would be required to check if a patent exists—and get the patent holder's permission—before approving a generic medicine. In practice, this gives pharmaceutical companies even more control over the market.

Worse still, it opens the door for patent evergreening—where companies make small, insignificant changes to old drugs just to keep extending their monopoly. This is bad news for Kenyan patients and generic manufacturers alike.

This is disastrous for local production of generic medicines in Kenya. It will disincentive any generic company from trying to market a generic version, even if the production of the generic medicine does not violate the patent, as according to Section 13.33(2) marketing approval will require the consent of the patent holder. These rules could make it harder and more expensive for Kenyans to access life-saving medicines by hindering local production and the importation of generics and hence, hinder access to affordable medicines.

Local production of medicines is critical for Kenya's national and health security as evidenced during COVID-19, during which the African region including Kenya struggled to obtain timely access to affordable health products. The situation is even more dire today given the freeze in international aid and disbandment of USAID. A 2023 study by the Kenya Legal and Ethical Issues Network on HIV and AIDS (KELIN) auditing the status of local manufacturing of ARVs for PLHIV in Kenya, found that despite available expertise and lessons learned from Covid-19, the environment for sustainable local ARV production faces multiple obstacles. While identifying several key barriers, including weak policy and regulatory frameworks, inadequate infrastructure, limited financial resources, insufficient political support and challenges in maintaining WHO manufacturing standards, the study concluded that the landscape for a sustainable, resilient local production of ARVs in Kenya is not promising now.

The call to exclude intellectual property in the FTA is premised on concerns that strong intellectual property protections, especially for pharmaceutical products, could limit access to essential medicines, including for people living with HIV and affected by TB. Given the power imbalance between Kenya and the UAE, there is a real risk that Kenya's ability to safeguard public health to make medicines affordable may be undermined.

Kenya is not alone in facing the dangers of TRIPS-plus rules. Other countries that adopted similar provisions have experienced significant consequences.

What Other Countries Have Learned

Colombia	Thailand	Jordan
Since adopting data exclusivity in 2002, the country's public health system incurred an additional USD 396 million in medicine costs between 2003 and 2022.	A 5-year exclusivity rule would cost between USD 146.3 million and USD 696.4 million annually—or USD 3.7 billion over 15 years.	Due to TRIPS-plus rules, some medicines were up to 800% more expensive than in Egypt. For 81 medicines without generic alternatives, TRIPS-plus monopolies increased spending by USD 6.3 million to USD 22 million.

These global examples offer a clear warning for Kenya: if Section 13.33 of the Kenya–UAE FTA is adopted as is, it could hinder both the importation and local production of generics by denying marketing approval—even in cases where no valid patent exists.

While Section 13.33(3) of the FTA appears to permit exceptions, these are narrowly defined and arguably limited to formal WTO waivers. Moreover, the burden is placed on Kenya to justify and actively take steps to override exclusivity—creating unnecessary legal and political obstacles.

Crucially, this section could undermine Kenya's ability to make use of TRIPS flexibilities such as compulsory licensing, weakening our capacity to respond to public health emergencies and uphold the right to health.

Reflections

Kenya's public health system cannot afford to absorb the costs and restrictions of TRIPS-plus rules. Here's why we must act now. Kenya must avoid the adoption of any TRIPS-plus measures in FTA. These measures, especially market exclusivity and patent linkage, must be avoided for these reasons:

- **They delay affordable treatment.** TRIPS-plus rules block generic medicines from entering the market, keeping drug prices high for longer.
- **They entrench monopolies.** Multinational pharmaceutical companies retain exclusive rights for years—hindering competition and innovation.
- **They hurt local manufacturing**. Local producers are discouraged from making essential medicines due to stricter approval barriers.
- **They increase public health costs.** The government must spend more on patented drugs, diverting funds from other health services.
- **They undermine TRIPS flexibilities.** Even though global law allows countries to protect public health, TRIPS-plus rules weaken these rights.
- **They encourage "evergreening."** Companies slightly tweak old drugs to renew patents and extend monopolies, with no real innovation.
- **They violate the right to health**. Access to affordable medicines is a human right recognized in the Constitution, WHO, and UN frameworks.

In brief, TRIPS-plus provisions—especially market exclusivity and patent linkage—prioritize multinational pharmaceutical profits over the health and lives of Kenyans. They delay access to affordable, life-saving medicines, drive up costs for patients and the government, and directly undermine Kenya's ability to produce or import generics. The COVID-19 pandemic made it painfully clear: our national health security depends on strong local manufacturing and flexible access to essential medicines. With foreign aid shrinking and global donors stepping back, this is the worst possible time to hand over control of our health systems to foreign monopolies.

These provisions are not just legal technicalities, they are life-and-death decisions. Kenya must uphold its constitutional duty to protect the right to health.

What Can Be Done?

There is still time to act. We call on the National Assembly to withhold ratification of the Kenya–UAE Comprehensive Economic Partnership Agreement (CEPA) in its current form. As it stands, the agreement contains significant gaps that could restrict access to affordable medicines and compromise Kenya's public health priorities.

1. We urge the government to **use the revised Parliamentary Standing Orders to reject TRIPS-plus provisions** in the CEPA. Kenya must protect its right to produce affordable medicines—now more than ever.
2. In a time of fiscal strain and global health uncertainty, **signing away these rights threatens our Constitution,** undermines Universal Health Coverage, and puts lives at risk.
3. **We are not against trade.** We support smart trade—agreements that strengthen Kenya's economy without sacrificing public health.
4. **No agreement should cost Kenyan lives.** We urge the government not to rush this deal. Kenya must retain the power to protect public health. Broad consultation is essential, and the intellectual property chapter must be removed or reserved from the FTA.
5. **Let us learn from COVID-19:** without access to affordable medicines and strong local production, we are vulnerable.
6. **This is not just about law—it's about life.** Parliament must act now to protect our right to health.

#MakeMedicinesAffordable

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