

IMPLEMENTING PARALLEL IMPORTATION AND LICENSING
MECHANISMS TO INCREASE ACCESS TO MEDICINES IN KENYA

A THESIS
SUBMITTED TO THE
STANFORD PROGRAM IN INTERNATIONAL LEGAL STUDIES
AT THE STANFORD LAW SCHOOL,
STANFORD UNIVERSITY
IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR THE DEGREE OF
MASTER OF THE SCIENCE OF LAW

By

Jackline Irene Muthoni Nyaga

April 2009

ABSTRACT

This dissertation presents the results of an empirical investigation Kenya's experience in implementing the mechanisms of parallel importation and licensing to increase access to medicines in the country. Three interconnected research questions are addressed: are the mechanisms of parallel importation and licensing in fact being used in Kenya; what factors have promoted the use or non use of these mechanisms; and what has been the impact of the use of the mechanisms, if any, on the intellectual property rights holders in the country.

The research that informs this thesis was conducted using a multi-method approach. The overarching research strategy was however that of semi-structured interviews with representatives of key actors in the pharmaceutical industry in Kenya. The findings revealed that whereas there is significant use of parallel importation mechanism, there is very limited use of voluntary licensing and in fact, there has not been any use of the involuntary licensing mechanisms at all.

Based on the research findings, it appears that in Kenya, use of parallel importation has flourished more than licensing mechanisms because, save for legislative action and creation of a policy framework, the former does not require further significant action on the part of the Government. Licensing mechanisms on the other hand require action in terms of for example providing incentives targeted towards lowering the cost of manufacture.

I therefore argue that where the government's active intervention beyond mere legislative action is required, the mechanism is not as successfully implemented as is the case where none or minimal involvement of the government is required. I suggest that for effective

implementation of the mechanisms of parallel importation and licensing, creating an enabling legislative and policy framework is merely the critical first step. This framework needs to be further followed up with more deliberate intervention on the part of the government so as to ensure successful implementation of the mechanisms.