

The SOUTH CENTRE Monthly

April 2019, Issue 10

***The South Centre Monthly* is a monthly update which provides a snapshot of the publications and social media activities of the South Centre**

QUARTERLY REPORT

South Centre Quarterly Report, 1 January to 31 March 2019



This report summarizes the programmatic activities of the South Centre during the period 1st January to 31st March 2019. It is intended to provide information, organized by Program and themes, about recent developments in the areas covered by the South Centre's Work Program and publications made and meetings organized or co-organized by the Centre to examine particular issues or to provide analytical support for international negotiations taking place in various fora. It also informs about external conferences and other meetings where the Centre has participated.

Le présent rapport trimestriel résume les activités programmatiques du Centre Sud pour la période allant du 1^{er} janvier au 31 mars 2019. Il présente, par programme de travail et par thème, des informations concernant les dernières évolutions dans les domaines de travail des programmes du Centre Sud, ainsi que les publications diffusées et les réunions organisées par le Centre Sud ou organisées en collaboration avec d'autres institutions en vue d'examiner des sujets particuliers ou d'apporter un appui analytique aux négociations internationales ayant lieu dans plusieurs instances. Il liste également les conférences et autres réunions auxquelles le Centre a assisté.

En este informe trimestral se resumen las actividades programáticas realizadas por el Centro del Sur entre el 1 de enero y el 31 de marzo de 2019. El informe presenta, por programas y temas,

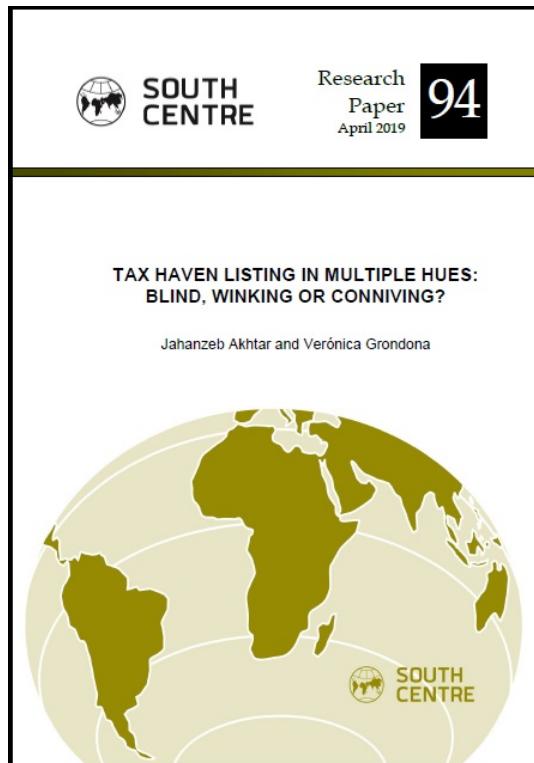
información sobre acontecimientos recientes en las diferentes áreas abordadas por el programa de trabajo del Centro del Sur, así como sobre las publicaciones difundidas y las reuniones organizadas y coorganizadas por el Centro para examinar cuestiones específicas o prestar apoyo analítico en relación con las negociaciones internacionales que tienen lugar en varios foros. También incluye una lista las conferencias y otras reuniones externas en las que el Centro del Sur ha participado.

Available from: <https://www.southcentre.int/south-centre-quarterly-report-january-march-2019/>

PUBLICATIONS

Research Papers

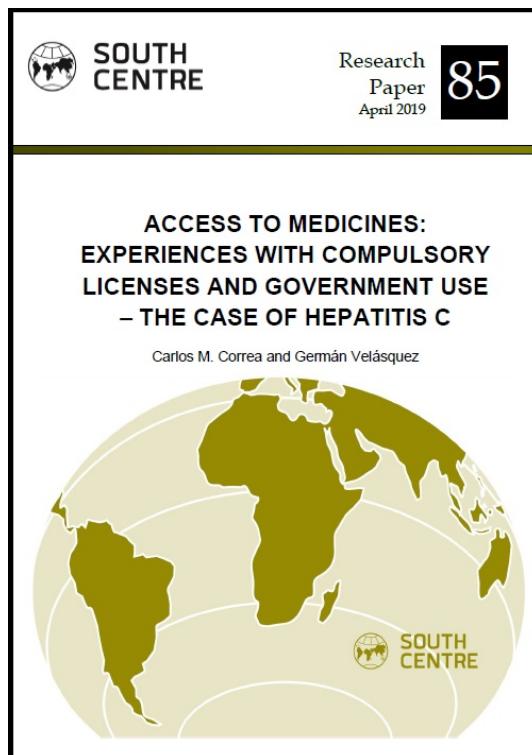
Research Paper 94, April 2019: Tax Haven Listing in Multiple Hues: Blind, Winking or Conniving?



Tax havens are among the biggest challenges faced by developing countries in achieving their national development goals. States, international organisations, multilateral agencies and non-governmental organisations have all made several efforts at compiling 'lists' of tax havens at the multilateral and national levels, with varying levels of seriousness and outcomes. This research paper examines these efforts by analysing the objectivity of criteria used and the clarity of the final outcome in a comparative manner. The paper is organized into four sections dealing with the tax haven blacklisting by the Organisation for Economic Co-operation and Development (OECD), the countries of the South, the European Union (EU) and an analysis across lists. The concluding section offers some suggestions.

Available from: <https://www.southcentre.int/research-paper-94-april-2019/>

Research Paper 85, April 2019: Access to Medicines: Experiences with Compulsory Licenses and Government Use – The case of Hepatitis C



This South Centre research paper discusses first, the limitations of the current research and development (R&D) model and its implications for access to medicines. Second, it considers the tension between intellectual property rights applied to medicines and States' observance of the fundamental right to health. Third, it examines the case of access to medicines for the treatment of Hepatitis C, illustrating the barriers to access created by intellectual property and the high prices normally associated with its exercise. Fourth, it presents the background, main aspects and obstacles to the achievement of the objectives of the Doha Declaration on the TRIPS Agreement and Public Health (2001). To conclude, this paper examines the experiences of compulsory licensing and government use of patents in Latin America (particularly in Ecuador, Peru and Colombia).

Ce document de recherche du South Centre traite en premier lieu des limites du modèle actuel de recherche et développement (R&D) et les implications pour l'accès aux médicaments. Deuxièmement, il examine la tension entre les droits de propriété intellectuelle appliqués aux médicaments et le respect du droit fondamental à la santé par les États. Troisièmement, il examine le cas de l'accès aux médicaments pour le traitement de l'hépatite C, en illustrant les obstacles à l'accès créés par la propriété intellectuelle et les prix élevés normalement associés à son exercice. Quatrièmement, il présente le contexte, les principaux aspects et les obstacles à la réalisation des objectifs de la Déclaration de Doha sur l'Accord sur les ADPIC et la santé publique (2001). Pour conclure, le présent document examine les processus d'obtention des licences obligatoires et l'utilisation des brevets par les gouvernements, à travers des expériences concrètes en Amérique latine (en particulier en Équateur, au Pérou et en Colombie).

Este documento de investigación del South Centre analiza primero las limitaciones del modelo actual de investigación y desarrollo (I&D) y sus implicaciones para el acceso a los medicamentos. En segundo lugar, considera la tensión entre los derechos de propiedad intelectual aplicados a los medicamentos y la observancia de los Estados del derecho fundamental a la salud. En tercer lugar, examina el caso del acceso a medicamentos para el tratamiento de la hepatitis C, ilustrando las barreras de acceso creadas por la propiedad intelectual y los altos precios normalmente asociados con su ejercicio. En cuarto lugar, presenta los antecedentes, los principales aspectos y los obstáculos para el logro de los objetivos de la Declaración de Doha sobre el Acuerdo sobre los ADPIC y la Salud

Pública (2001). Para concluir, este documento examina la concesión de licencias obligatorias y el uso por el gobierno de patentes, en experiencias en América Latina (en particular, Ecuador, Perú y Colombia).

Available from: <https://www.southcentre.int/research-paper-85-april-2019/>

Policy Briefs

Policy Brief 59, April 2019: The ‘obvious to try’ method of addressing strategic patenting: How developing countries can utilise patent law to facilitate access to medicines



POLICY BRIEF
No. 59 | April 2019

The ‘obvious to try’ method of addressing strategic patenting:
How developing countries can utilise patent law
to facilitate access to medicines*

By Olga Gurgula
Lecturer in Law at Brunel University London and Visiting Fellow at Oxford Martin School
(the Affordable Medicines Project), University of Oxford

Introduction

The problem of access to affordable and effective medicines is currently considered to be of critical importance around the world. This issue affects both developing and developed countries, which have been increasingly suffering from high drug prices.¹ It is particularly acute in developing countries, where governments reconsider their policies in this field. While in the past, countries were free to develop their national IP-related policies to combat high prices and facilitate access to medicines in accordance with their local needs, with the TRIPS Agreement coming into force they must now operate within the limitations set by this international instrument. In particular, prior to TRIPS, many countries enjoyed patent protection on a number of products only limited to those of their own manufacture.² However, TRIPS, which came into force in 1995, established new international rules on pharmaceutical patent protection, which now applies to all fields of technology...³ The consequence of this provision is that it obliges all Member States of the WTO to provide patent protection to all inventions, including pharmaceuticals. In other words, patent protection must now be available for medicines.

These changes have been particularly detrimental for developing countries that cannot afford the cost of expensive patent-protected medicines.⁴ The problem is further exacerbated by the imposition of additional restrictions in the field of pharmaceuticals on developing countries as a result of bilateral trade pressures and trade agreements, many of which include the so-called ‘TRIPS-plus’ provisions.⁵ These provisions prevent developing countries from using TRIPS flexibilities and otherwise fulfilling the obligations under the TRIPS Agreement. In addition to the high level of protection for medicines established by these international and bilateral instruments, pharmaceutical companies use various mechanisms to allow them to further strengthen the protection of their products. Among such practices is strategic patenting, or evergreening, which refers to a specific strategy under which ‘patent owners take undue advantage of the law and associated regulatory process to extend their IP monopolies...’⁶ Paradoxically, highly lucrative ‘blockbuster’ drugs by filing disguised/artificial patents on an already patent protected invention shortly before expiry of the ‘parent’ patent. Such strategies are largely organized to secure the most efficient and longest possible market protection for their successful products.⁷ As the European Commission noted in its Pharmaceutical Sector Inquiry Report,⁸ these patent strategies have the capacity ‘to extend the scope and duration of [the original] patent protection’ and ‘to delay or block the market entry of generic medicines’.⁹

In these complex and highly restrictive conditions, developing countries are in a difficult position: on the one hand, they are required to meet their obligations under international and bilateral agreements, while on the other hand, they are obliged to provide their citizens with essential, often life-saving medicines. The latter forces developing countries to search for effective mechanisms

Abstract

The current patentability standards for pharmaceutical inventions, as well as strategic patenting used by pharmaceutical companies, have substantially impacted access to affordable medicines. This has been especially detrimental for developing countries, which are under significant pressure to remain compliant with their international and bilateral obligations, while also providing their people with essential drugs. In order to improve access to medicines, developing countries may choose from a range of various mechanisms that may help to facilitate such access, while also allowing them to remain compliant with their international and bilateral obligations. This policy brief suggests that one of such mechanisms is to strengthen the obviousness requirement by applying the ‘obvious to try with a reasonable expectation of success’ test to pharmaceutical follow-on inventions. It may help to prevent the extension of patent protection and market exclusivity of existing drugs by pharmaceutical companies and, as a result, may open such medicines up to generic competition.

* This policy brief is based on the author’s PhD thesis ‘Strategic Patenting in the Pharmaceutical Industry: A Competition Law Perspective’.

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Available from: <https://www.southcentre.int/policy-brief-59-april-2019/>

Investment Policy Brief 17, April 2019: Challenges of Investment Treaties on Policy Areas of Concern to Developing Countries

 **SOUTH CENTRE** **INVESTMENT POLICY BRIEF**
www.southcentre.int No. 17 • April 2019

Challenges of Investment Treaties on Policy Areas of Concern to Developing Countries

By Kinda Mohamadiéh*
Senior Researcher, Global Governance for Development Programme (GGDP)
The South Centre

I. Introduction

International investment agreements (IIAs) have played a significant role as an element of both developed and developing countries' investment policies. IIAs offer foreign investors a number of protections through establishing standards of treatment that have been awarded broadly and unbalanced expansionary arbitration provisions that provide foreign investors with the legal power to seek compensation for what is considered adverse acts or omissions by a sovereign State, such as direct or indirect expropriation, other measures of regulation, and service treatment, including non-discrimination, the 'fair and equitable treatment' standard, and the protection against illegal or uncompensated expropriation. Overall, the primary policy objective of most IIAs is to provide foreign investors with certainty. IIAs tend to impose obligations on investors nor address the disruptive effects of investment incentives. Neither do IIAs seek to discipline any competition that may arise among countries to attract more direct investment (FDI) through the introduction of incentives.

During the past few years, IIAs have been under critical discussion and review, including their implications on the use of policy tools essential to achieve growth, industrialisation and sustainable development goals (SDGs) including addressing inequalities. The legitimacy of the investor-state dispute settlement (ISDS) system embedded in these treaties has been questioned. There have been new policy advocacy efforts with respect to IIAs, with many of the new IIAs reflecting some of the development-oriented reforms suggested by the United Nations Conference on Trade and Development (UNCTAD) as part of its reform package for the preservation of policy space and improvements on or exclusion of ISDS.

Abstract

Country experiences have revealed that international investment agreements (IIAs) could have an adverse policy impact on various policy areas that are generally important for developing countries in relation to the achievement of their development objectives. This policy brief gives an overview of challenges resulting from IIAs to major policy areas of concern to developing countries. These policy areas include industrial policy, tax reform, handling debt crisis, the use of capital controls, intellectual property rights, public-private partnerships, and climate change action in relation to investment in clean technologies.

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Available from: <https://www.southcentre.int/investment-policy-brief-17-april-2019/>

SouthNews

SOUTHNEWS No. 248, 12 April 2019: South Centre Statement to the G-24 Ministerial Meeting



The South Centre Statement was delivered by Mr. Carlos Correa, Executive Director, South Centre, to the Ministerial Meeting of the Group of 24, held at Washington D.C., on 11th April, 2019.

Available from: <https://us5.campaign-archive.com/?u=fa9cf38799136b5660f367ba6&id=0f43eed83b>

SOUTHNEWS No. 249, 18 April 2019: UNGA endorsed the outcome document on the BAPA+40

The South Centre Statement was delivered by Mr. Carlos Correa, Executive Director, South Centre, to the Ministerial Meeting of the Group of 24, held at Washington D.C., on 11th April, 2019. The United Nations General Assembly endorsed the outcome document of the Conference on South-South Cooperation (BAPA+40) on 15 April 2019, which recognizes, inter alia, that 'South-South and triangular cooperation contribute to the implementation of the 2030 Agenda for Sustainable Development'. It also recognizes that 'South-South cooperation is conducted among countries of the South, including but not limited to the economic, social, cultural, environmental, and technical domains, that can take place in a bilateral, regional or inter-regional contexts, for developing countries to meet their development goals through concerted efforts, taking into account the principles of South-South cooperation'. It reiterated that 'South-South cooperation is not a substitute for, but rather a complement to, North-South cooperation.' The Group of 77 and China made a statement at the meeting that is accessible at <https://www.g77.org/statement/getstatement.php?id=190415b>

Available from: <https://us5.campaign-archive.com/?u=fa9cf38799136b5660f367ba6&id=7e9e68fb7>

SOUTHNEWS No. 250, 23 April 2019: G24 Communiqué on the World Bank and IMF 2019 Spring meeting



The annual Spring meeting of the International Monetary and Finance Committee (IMFC) and the Development Committee consisting of the principals from capitals and the executive directors of the International Monetary Fund (IMF) and the World Bank took place in Washington DC from 8 to 14 April 2019. On the sidelines of the meeting of the Intergovernmental Group of Twenty-four on International Monetary Affairs and Development also known as G24, the 101st Meeting of Ministers and Governors was held on April 11. The group which represents the interests of developing countries in financial issues sent a strong message for reform in the international financial systems and called for a collective global response to resolve ongoing trade tensions within a rules-based trading system. The meeting was chaired by H.E. Julio Velarde, Governor of the Central Reserve Bank of Peru. Below is the Communiqué.

Available from: <https://us5.campaign-archive.com/?u=fa9cf38799136b5660f367ba6&id=3f1b14f038>

SOUTHNEWS No. 251, 26 April 2019: Judges discuss intellectual property enforcement from a public health perspective in Paraguay



There is sufficient evidence to firmly engage in a process of fundamental reform of the international investment agreements (IIAs) and investor-State dispute settlement (ISDS) system. Developing countries' negotiators and experts discuss the way forward during the 12th Annual Forum of Developing Country Investment Negotiators held in Cartagena, Colombia on 27 February-1 March 2019.

Available from: <https://us5.campaign-archive.com/?u=fa9cf38799136b5660f367ba6&id=b6bece07de>

Social Media

Twitter Highlights:

Top Tweet earned 2,263 impressions

The **@South_Centre** & the Supreme Court of Justice Paraguay **@PoderJudicialPY** will be jointly organizing a two day National Judges Training on **#IntellectualProperty Rights, Enforcement & #PublicHealth #publicinterestprotection** **#PropiedadIntelectual #CSJ** See southcentre.int/sc-and-supreme... pic.twitter.com/Z9FTGiEcvN



13 5 7

Top mention earned 176 engagements

India at UN, Geneva
@IndiaUNGeneva · Apr 30
India IN in Geneva @IndiaUNGeneva

20th Meeting of the Council of Representatives of the **@South_Centre** in Geneva on 30th April 2019

Ambassador(Retd.) Ajit Kumar elected as the Convenor of the Council of Representatives of Member States of the South Centre. pic.twitter.com/2KUtCFwyW1



13 19 38

Top media Tweet earned 1,998 impressions

Mr. Andres Tinajero Mullo, Ntl. Dir. **#IndustrialProperty #Ecuador**, signed w/ **@South_Centre** cooperation agreement & working prog. on **#IP & #accesstomeds**, incl. analysis of **#TRIPSflexibilities**, normative reviews & trainings to be conducted by the Centre in Ecuador 📸
@SENADI_Ecuador
pic.twitter.com/1LJrGrsdUI



13 5 6

APR 2019 SUMMARY

Tweets
43

Tweet impressions
70.8K

Profile visits
6,816

Mentions
78

New followers
35

South Centre @South_Centre · Apr 5
 Taller para jueces sobre "Flexibilidades del Acuerdo ADPIC con relación a la observancia" organizado por el Centro Sur y la Corte Suprema de Justicia fue declarado de interés nacional por la #CSJ #PropiedadIntelectual #publicinterestprotection

Corte Suprema CSJ @PoderJudicialPY

 El 11 y 12 de abril próximo se realizará el Taller para jueces sobre "Flexibilidades del Acuerdo ADPIC con relación a la Observancia", en sede judicial de Ciudad del Este. La actividad fue declarada de interés por la #CSJ ...

Translate Tweet

0 6 4 11

South Centre @South_Centre · Apr 5
 Students from the London School of Economics and Political Science (@LSEnews) visited the @South_Centre to discuss health and the Centre's perspective on the #WorldHealthOrganization



0 4 8 11

South Centre @South_Centre · Apr 5
 Carlos Correa, @South_Centre Executive Director, presents at Smart IP Conference in Cartagena new research project on #technologytransfer in #LatinAmerica to be carried out with the auspices of the #MaxPlanckInstitute on #IntellectualProperty and #CompetitionLaw



0 1 4 11

South Centre @South_Centre · Apr 5
 Aileen Kwa @ #gender & #digitaleconomy panel: #Trade policies have always been used to support #industrialisation. In digital economy, #datalocalisation regulations are new trade policies. What is good for industrialisation & #employment is good for #women. Photo: @africakiza



0 5 5 11

South Centre @South_Centre · Apr 8
 . @South_Centre, Shailendra Singh, #India's Add'l Sec of Dept of Industrial Policy & Promotion presented #ecommerce policy (bit.ly/2GK5blH) which some participants viewed as possible model for #developingcountries to harness citizens' #data for their own #development



DPIIT India

0 1 4 11

South Centre @South_Centre · Apr 9
 Dr. Soumya Swaminathan Chief Scientist @WHO visited @South_Centre to discuss possible further collaboration btw two institutions on health issues- #AMR virus sharing #digitalhealth & #SouthSouthcooperation in conducting R&D to address diseases prevailing in #developingcountries



0 3 14 11

South Centre @South_Centre · Apr 10

Dr. Carlos Correa, Director Ejecutivo @South_Centre hablará en el Taller Nacional para Jueces sobre Flexibilidades del Acuerdo ADPIC en relación a la Observancia, el 11 y 12 de abril en Ciudad del Este, Paraguay #publicinterestprotection #JusticiaPy #CSJ #PropiedadIntelectual

[Translate Tweet](#)



"Las disposiciones de observancia deben, al mismo tiempo, asegurar el ejercicio de los derechos legítimos de los titulares de propiedad intelectual y evitar el abuso de esos derechos."

CARLOS CORREA

Carlos Maria Correa, Thamara Romero, Nirmalya and 3 others

2 5

South Centre @South_Centre · Apr 11

Vitor Ido @vitor_ido, researcher at the @South_Centre, presented at the #UNCTADeWeek his on-going research on #IntellectualProperty in the #digitaleconomy, how to maximize access to knowledge and #technology for #developingcountries @UNCTAD @DiplomacyEdu bit.ly/2P2liMG



Vitor Ido

4 6

South Centre @South_Centre · Apr 10

Dr. German Velasquez, Asesor Especial @South_Centre hablará en el Taller Nacional para Jueces sobre Flexibilidades del Acuerdo ADPIC en relación a la Observancia, el 11 y 12 de abril en Ciudad del Este, Paraguay #publicinterestprotection #JusticiaPy #CSJ #PropiedadIntelectual

[Translate Tweet](#)



"Uno de los factores más importantes para resolver los actuales problemas de salud en los países en desarrollo es ofrecer a las personas la posibilidad de que cuenten con los medicamentos esenciales que correspondan a sus necesidades."

GERMAN VELASQUEZ

Corte Suprema CSJ

2 5

South Centre @South_Centre · Apr 15

The @South_Centre participated in the G-24, FES and ICRICT meeting on "International Tax Policy at a Critical Juncture" on 13 April during the Spring meetings by the IMF and World Bank in Washington DC. #taxpolicy #SPRINGMEETINGS2019



IMF, icrict, FES online and 2 others

4 4

South Centre @South_Centre · Apr 16

Dr. Carlos Correa, Directeur Exécutif @South_Centre et Ambassadeur Henri Eli Monceau Représentant permanent @OIFfrancophonie discutent des possibilités de renforcement de coopération pour élargir la présence de la langue française dans les travaux du Centre du Sud

Translated from French by Microsoft

Dr. Carlos Correa, Executive Director @South_Centre and Ambassador Henri Eli Monceau Permanent Representative @OIFfrancophonie discuss the possibilities of strengthening cooperation to broaden the presence of the French language in the work of the South Centre

Carlos Maria Correa and Henri Eli Monceau

1 2 3

South Centre @South_Centre · Apr 16

Dr. Carlos Correa, Exec. Dir. @South_Centre was pleased to meet Ambassador Ms. Saja Majali, PR of the Hashemite Kingdom of Jordan to the UN & other intl. orgs. in Geneva, & discuss further cooperation and interaction with the South Centre on policy matters relevant to Jordan.

Jordan at UN Geneva, Carlos Correa and Saja Majali

South Centre @South_Centre · Apr 17

Deputy Permanent Representative of the United Republic of Tanzania, Mr. Robert Kainunula Vedasto Kahendaguza and Dr. Carlos Correa, Exec. Director @South_Centre exchanged views on current developments and discussed further cooperation on #taxpolicy and other matters.

1 2 3

South Centre @South_Centre · Apr 17

The @South_Centre was pleased by visit of Ambassador of the Dominican Republic to the #WTO & other intl. orgs. Ms. Katrina Naut & the opportunity to discuss further cooperation at ntl. & regional level. The Centre is eager to improve presence & expand activities in the #Caribbean

Katrina Naut

1 2 3 4

South Centre @South_Centre - Apr 18
 Assisted by @FESonline NY office, @South_Centre & UN FFSID, H.E. Ms. Inga Rhonda King, President @UNECOSOC hosted a luncheon dialogue on "Future of Work & Job Creation" w/ almost 100 attendees, incl. ministers, exec. dirs. of #WorldBank #IMF & missions to UN during 2019 #FFSDForum



IMF, World Bank PSD, United Nations and UN DESA

1 3 2 3

South Centre @South_Centre - Apr 25
 W/o significant progress in #systemicreforms called for in Financing for Devt process, domestic pvt. #investment will b insufficient to achieve #SDGs due high #borrowingcosts arising frm ext. #economicvolatility - Dr. Manuel F. Montes @South_Centre Sr. Advisor, 2019 FFDforum, NY



1 3 2 3

South Centre @South_Centre - Apr 26
 On #WorldIPDay, learn how the @South_Centre is promoting #IPregimes that are supportive of #publichealth Visit ipaccessmeds.southcentre.int



1 8 9 3

South Centre @South_Centre - Apr 26
 The @South_Centre & the Supreme Court of Justice of #Paraguay delivered a national training for judges on #IPRs & #publichealth with a focus on #IPenforcement. Participants assessed the workshop as excellent. #SouthNews us5.campaign-archive.com/?u=fa9cf387991.... See also ipaccessmeds.southcentre.int



Corte Suprema CSJ

1 2 2 3

South Centre @South_Centre - Apr 29
 #RightToDevelopment is at the centre of discussions in Geneva this week. The @South_Centre will be attending and speaking at the 20th Session of the Working Group on the Right to Development, which is expected to launch discussions towards a legally binding instrument on the Rtd



1 7 14 3

South Centre @South_Centre - May 1
 The expanding dominance of the #digitaleconomy creates challenges on the allocation of #taxingrights for developing countries. The @South_Centre peer exchange meeting in #NY was an opportunity to identify opportunities and solutions that serve #developingcountries interests.



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