

POLICY BRIEF ON INTELLECTUAL PROPERTY, DEVELOPMENT AND HUMAN RIGHTS:

HOW HUMAN RIGHTS CAN SUPPORT PROPOSALS FOR A WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO) DEVELOPMENT AGENDA

POLICY BRIEF 2

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3D → Trade
→ Human
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Introduction

In an increasingly technology-driven world, the standard of protection provided by intellectual property (IP) rules is affecting development policies, human rights and other public-interest goals more than ever. Strict IP rules have had an adverse impact on the ability of many governments to fulfil their human rights obligations, of which obligations to ensure access to affordable medicines, educational goods and adequate food. This trend towards higher IP protection has been stimulated by the adoption of the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) in the 1990s, and the harmonization initiatives at the World Intellectual Property Organization (WIPO). At WIPO, concerns about this trend prompted developing countries to put forward since 2004 a series of proposals in support of a WIPO Development Agenda. The proposals aim to ensure that international IP policy within WIPO takes into account development goals and is coherent with the international obligations of States, including obligations under human rights treaties. Human rights law and mechanisms can support this push for greater development coherence of the international IP regime, and accountability in IP decision-making.

The TRIPS Agreement, which came into force in 1995, set minimum standards of IP protection which all members of the WTO have to implement. Despite international concerns about the impact of the TRIPS Agreement on development, IP standards worldwide continue to increase. These strict IP standards, known as “TRIPS-plus” standards, have emerged in investment agreements, trade agreements and in WIPO treaties. Moreover, the WIPO Secretariat has also been criticized for promoting TRIPS-plus standards at the expense of development concerns in its technical assistance and norm-setting activities.¹ There have been particular concerns that WIPO’s technical assistance has too often failed to properly take into account the range of public policy goals relevant to IP policymaking in developing countries and tailor advice to respond to their particular economic, social and cultural development needs and circumstances.²

If this race to the top at WIPO and in other fora continues, the scope for developing and least developed countries to adopt IP policies that respond to their development needs will be further compromised. In so doing, the push for ever-stronger IP standards also stands to undermine the promises in a series of international political commitments such as the United Nations Millennium Development Goals (MDGs), the Johannesburg Declaration on Sustainable Development, and the Sao Paulo Consensus at UNCTAD XI (which promotes the use of “policy space” for development). Furthermore, if countries are required to implement the high IP standards sought through new multilateral agreements or inappropriate technical assistance, they risk violating their legal obligations under international human rights law, including the right to life, the right to health, the right to

education, the right to food, the right to an adequate standard of living, the right to access information, the right to take part in cultural life and to enjoy the benefits of scientific progress.

Mounting concern and criticism of WIPO's activities by civil society,³ academics and developing countries provided impetus to a group of fourteen developing countries known as the "Group of Friends of Development" (Friends of Development)⁴ to submit a proposal to the WIPO General Assembly requesting the establishment of a new Development Agenda for WIPO.⁵ In October 2004 the Thirty-First WIPO General Assembly decided to convene inter-sessional intergovernmental meetings (IIMs) to examine proposals for a WIPO Development Agenda.⁶ Three such meetings were held in 2005. At the Thirty-Second Session of the WIPO General Assembly in October 2005 WIPO's Member States agreed to "accelerate and complete" the IIM discussions by convening two meetings of a Provisional Committee on Proposals Related to a WIPO Development Agenda (PCDA) in 2006.⁷

The purpose of this Policy Brief is to encourage advocates, policy-makers and WIPO Member States to continue high-level discussions on a WIPO Development Agenda and elaborate an actionable, pro-development agenda that is consistent with the development commitments and human rights obligations of WIPO Member States. Part I will briefly outline how human rights can reinforce a development approach to intellectual property policy. Part II will consider the main proposals submitted on the WIPO Development Agenda and outline how human rights can support a pro-development outcome.

I. Human rights and development

Development can be seen as a process which involves fairness of opportunity between countries, and non-discrimination between people within countries.⁸ Human rights can support development goals in three general ways.⁹ First, by identifying which obligations States and other actors have in relation to members of society, including the most vulnerable and marginalized groups. Second, by helping to identify which strategies and measures are needed by States and other actors in order to realize human rights and support development. Third, by providing mechanisms capable of holding public and private actors accountable. A rights-based approach to development therefore supports more transparent policy-making and greater assessment of the impact of policies on the poorest members of society.

All of the 182 Member States of WIPO are parties to at least one of the international human rights treaties, which include the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Human rights law requires States to implement policies that respect, protect and fulfil human rights and avoid measures that would go back on their human rights commitments. Human rights law also requires States to ensure that policies do not undermine the ability of other countries to comply with their human rights obligations.¹⁰

Implementation of international human rights treaties is monitored by treaty bodies composed of independent experts. All State parties have to submit periodic reports to these bodies on the measures taken to comply with their human rights obligations.¹¹ Treaty bodies, such as the Committee on the Rights of the Child, review measures taken by the State and make concluding observations. For example, the Committee on the Rights of the Child recommended to El Salvador in 2004 to "systematically consider the best interests of the child when negotiating trade-related intellectual property rights and implementing them into national law."¹² Therefore, human rights rules and accountability mechanisms – such as treaty bodies – emerge as valuable tools to support the ongoing efforts of advocates and policy-makers in achieving a pro-development outcome in IP policy-making.

II. Human rights and the WIPO Development Agenda proposals

The WIPO Development Agenda discussions have stimulated the submission of a number of written proposals and suggestions to the WIPO process (first in the IIM and now in the PCDA). In addition to the Friends of Development proposal (and an elaboration on the original version of this), the United States (US), the United Kingdom (UK), Mexico, Bahrain, the African Group, and most recently Chile¹³ have also made submissions. In the IIM discussions in 2005, the written proposals were supplemented by a series of proposals and suggestions from the floor. This Policy Brief focuses primarily on those proposals submitted in writing to WIPO. It divides the issues covered in those proposals into the following four categories: mandate and governance; norm-setting activities; technical assistance; and access to knowledge.¹⁴

A. WIPO Mandate and Governance

According to the WIPO Convention, the mandate of the organization is to “promote the protection of intellectual property throughout the world through cooperation among States, and, where appropriate, in collaboration with any other international organization.”¹⁵ Moreover, when WIPO became a UN specialized agency in 1974, WIPO agreed to take “appropriate action in accordance with basic instruments, treaties and agreements administered by it, *inter alia*, for promoting creative intellectual activity and for facilitating the transfer of technology-related industrial property to developing countries in order to accelerate economic, social and cultural development, subject to the competence and responsibilities of the United Nations and its organs.”¹⁶ Also, the UN-WIPO Agreement requires WIPO to cooperate and coordinate its activities with other UN agencies.¹⁷

Academics and analysts have argued that the UN-WIPO Agreement widens the mandate of WIPO to incorporate a development dimension.¹⁸ Detractors, on the other hand, argue that the Agreement bears less weight than the WIPO Convention which binds all 182 Member States of WIPO. This debate aside, it cannot be disputed that WIPO is a UN institution. As part of the UN family, WIPO’s actions should be consistent with the existing international obligations of its Member States. In addition, principles of public international law call on WIPO’s Member States to act in ‘good faith’ and in a ‘policy-coherent’ manner.¹⁹

Mandate

The Friends of Development proposal suggests the inclusion of explicit language on the development dimension of WIPO objectives in the WIPO Convention.²⁰ In proposing this amendment, the Friends of Development aim to ensure that the WIPO Secretariat adopts a wider interpretation of WIPO’s mandate. The African Group proposal supports the Friends of Development proposal by encouraging WIPO to broaden its perspective as far as development is concerned and intensify its cooperation with other UN agencies and international organizations.²¹ In contrast to these efforts to mainstream a development dimension in WIPO activities, other proposals, such as the US proposal, call for delegating development concerns to a specific committee²²

Human rights law requires States to take steps “individually and through international assistance and cooperation, especially economic and technical”²³ to fulfil their human rights obligations.²⁴ One aspect of this obligation is to ensure greater coherence between different aspects of UN activities. The Committee on Economic, Social and Cultural Rights, for instance, has recommended that a State “as a member of international organizations, including international financial institutions such as the International Monetary Fund and the World Bank, must do all it can to ensure that the policies and decisions of those organizations are in conformity with the obligations of States parties under the Covenant, in particular the obligations

[...] concerning international assistance and cooperation.”²⁵ Therefore, human rights rules and mechanisms support the need to ensure greater coherence between the policies of UN organs. This could be achieved in WIPO via an amendment to the WIPO Convention or a wider interpretation of the WIPO mandate.

Independent evaluation of WIPO activities

Another proposal tabled by the Friends of Development advocates the establishment of an independent WIPO Evaluation and Research Office (WERO) capable of evaluating the development impact of WIPO activities, especially with regard to innovation, creativity, access and dissemination of knowledge and technology.²⁶ The purpose of this mechanism would be to ensure greater transparency and objective evaluation of WIPO’s activities. One of the proposed functions of WERO would be to carry out “development impact assessments” with regard to WIPO norm-setting activities and the implementation of existing WIPO treaties. The African Group proposal supports an “effective” evaluation mechanism and independent impact assessment.²⁷ The UK proposal also supports evaluation and assessment of WIPO’s work – particularly technical assistance to developing countries – although it advocates granting this role to existing WIPO Committees.²⁸ The Chilean proposal supports a more general assessment of IP systems undertaken by an independent body, selected by means of an international public bidding process.²⁹ The US,³⁰ Mexican³¹ and Bahrain³² proposals do not mention the need for independent evaluation.

Human rights law requires assessment of the development impacts of State activities, including State activities as part of international organizations such as WIPO. The obligation for State parties to human rights treaties to report on their policies is enshrined in article 16 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), article 40 of the International Covenant on Civil and Political Rights (ICCPR) and article 4 of the Convention on the Rights of the Child (CRC). Reporting by State parties has a twofold objective; first to ensure comprehensive review of legislation, rules, and procedures; and second, to ensure that State parties monitor the situation with respect to the rights in their countries.³³

The reporting and assessment dimensions of international human rights law clearly support the idea of an independent evaluating body that would provide greater transparency and access to information about WIPO activities. Such an evaluation body could also provide an opportunity to assess the impact of WIPO activities and proposed IP norms on the ability of Member States to comply with their human rights obligations – including the obligations to ensure access to affordable medicines for all,³⁴ access to educational goods,³⁵ access to adequate food,³⁶ protection of cultural life of indigenous peoples and local communities,³⁷ access to scientific knowledge³⁸ and the enjoyment of the right to the benefits of scientific progress and its applications.³⁹

Participation and consultation

The Friends of Development proposal calls for wider civil society participation and consultation in WIPO's activities and processes.⁴⁰ The proposal suggests that public-interest groups should be able to participate in WIPO decision-making processes on the same basis as right holder's organizations and private-interest groups. The impetus for this proposal is the fact that non-governmental organizations (NGOs) participating in WIPO processes have historically represented industrial and private interests. Individuals coming from these interest groups have been granted special advisory roles through, for example, WIPO's Policy Advisory Committee (PAC) and its Industry Advisory Committee (IAC). The proposal therefore aims to further open WIPO discussions to more participation from public-interest groups capable of providing input on the concerns of the public at large, including indigenous peoples, patients, consumers, librarians, and vulnerable and marginalized groups.

Participation of individuals and groups in decision-making is a human rights concern and is also crucial to ensuring greater human rights-consistency of WIPO's activities. The right to participate in public affairs is enshrined in human rights law, of which article 25 of the International Covenant on Civil and Political Rights (ICCPR).⁴¹ The Human Rights Committee, the treaty body monitoring the implementation of the ICCPR, has interpreted the right to participate as including participation in "all aspects of public administration, and the formulation and implementation of policy at the international, national, regional and local levels."⁴² Furthermore, the Committee on the Elimination of Racial Discrimination (CERD), the treaty body monitoring the ICERD, has noted that conditions need to be established in order to ensure that indigenous peoples enjoy "equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent."⁴³ Human rights law expressly requires that participation and consultation be conducted without discrimination.⁴⁴

In sum, human rights law requires WIPO Member States to implement a system of meaningful public consultation and effective participation and ensure that this system addresses potential barriers to participation by the most vulnerable and marginalized groups, such as indigenous peoples.

B. Norm-setting activities

WIPO's norm-setting activities have principally focused on promoting and harmonizing international IP protection standards. These norm-setting activities, such as the treaties that fall under the WIPO Patent Agenda and the WIPO Digital Agenda, have been criticized for promoting TRIPS-plus standards that do not take into account the level of development of WIPO Member States.⁴⁵ The Substantive Patent Law Treaty (SPLT), for example, aims

to harmonize legal definitions in patent law, potentially curtailing the capacity of developing countries to define patent law standards according to their own needs. There are also concerns that the SPLT may curtail the ability of developing countries to use the flexibilities currently open to them to ensure that patent rules do not limit access to affordable medicines, an inherent part of the right to health and the right to life.⁴⁶ In addition, the WIPO Digital Agenda has been criticized for undermining a number of human rights. In particular, the WIPO Copyright Treaty (WCT), which grants strict copyright protection for works published on the internet, has been criticised by public-interest groups⁴⁷ for constraining the right to access information and the right to enjoy the benefits of scientific progress.⁴⁸

Principles and guidelines for norm-setting activities

The Friends of Development proposal calls for the establishment of Principles and Guidelines for norm-setting in WIPO.⁴⁹ The proposal suggests five principles and guidelines to ensure that norm-setting activities are transparent and support public-interest and development objectives. These include a member-driven and transparent work plan; a proper assessment and justification for IP protection standards based on sustainable development; recognition of the need for standards that take into account different levels of development; recognition of the rights of different stakeholder groups and the need to balance private and public interests; and the need to ensure coherence and compatibility with international norms and instruments, including human rights obligations.⁵⁰

These principles are also accompanied by a request for "public hearings" prior to norm-setting activities. The African Group generally supports these principles, the idea that IP rules should be compatible with international human rights norms and standards, and that civil society and relevant stakeholders should participate more in norm-setting activities.⁵¹ The Chilean proposal does not echo these proposals as such, but encourages WIPO to assess complementary systems to promote creative activity, innovation and technology transfer and a participatory approach to assessing IP systems. The proposals from Bahrain,⁵² Mexico,⁵³ the UK and US do not set out any principles for norm-setting activities nor do they take up the far broader and deeper proposals for WIPO reform offered by the Friends of Development and African Group.

Human rights law encourages a more transparent and human rights-consistent approach to norm-setting activities. Indeed, human rights law requires a participatory approach to policy-making and norm-setting as outlined in section II A of this Policy Brief. In order for participatory rights to be respected and participatory processes to be fully transparent, it is essential to ensure access to information and the right to seek, receive and impart infor-

mation. These rights are part of the right to freedom of expression which is enshrined in human rights law in article 19 of the International Covenant on Civil and Political Rights (ICCPR).⁵⁴ The right to access information is also inherent in the principle of the best interests of the child, according to article 3 of the Convention on the Rights of the Child (CRC) and is part and parcel of economic, social and cultural rights such as the right to health or the right to education.

It should however be noted that some aspects of the Friends of Development proposal may need further clarification. For example, it is not clear which “rights” the proposal is referring to when it talks about “recognition of the rights of a wide range of stakeholders, all of which constitute the true “users” of the intellectual property system.”⁵⁵ In order to avoid confusion between IP “rights” (legal rights that can be sold and are limited in time) and human rights (inherent rights that cannot be derogated from, waived or sold), the proposal could be framed in such a way as to explicitly refer to the need to ensure that WIPO norm-setting activities fully respect, protect and fulfil the human rights of the public at large, in particular vulnerable and marginalized groups.

Development impact assessments

As outlined above, the Friends of Development suggest that WIPO norm-setting activities be evaluated by an independent WIPO Evaluation and Research Office (WERO) capable of undertaking “development impact assessments” of WIPO activities.⁵⁶ These impact assessments would weigh the cost and benefits of IP rules against sustainable development indicators including innovation, access to public knowledge and products, job creation, poverty alleviation, equity, respect for cultural diversity, protection of biological diversity, health, and education. Moreover, the proposal suggests that impact assessments would involve cost and benefit evaluations from other UN specialized agencies and international organizations such as UNCTAD, FAO, WHO and UN human rights organs. The African Group proposal also supports the idea of independent impact assessments and extends the coverage of these assessments to WIPO technical assistance, technology transfer and new treaties.⁵⁷ The Chilean proposal supports the preparation of an assessment of the “appropriate levels of intellectual property” considering the situation of each country. The US, Mexican and Bahrain proposals do not mention development impact assessments and statements made during the WIPO Development Agenda discussions demonstrate strong disagreement with the idea of development impact assessments.⁵⁸

As stated above, human rights law requires States to monitor public policies and ensure that they contribute towards the full realization of human rights. Moreover, human rights mechanisms have recommended that States undertake human rights impact assessments of intellectual property policies. For example, the Committee on the Rights of the Child has recommended that a “State party should

conduct an assessment of the impact of international intellectual property rights agreements on the accessibility of affordable generic medicines, with a view to ensuring children’s enjoyment of the highest attainable standard of health.”⁵⁹ Similarly, the Working Group on the Right to Development has recommended that “States be encouraged to undertake independent impact assessments of trade agreements on the right to development, as a potentially useful instrument at the national and international levels.”⁶⁰

Therefore, human rights law supports the principle of impact assessments. Moreover, it supports the idea that such impact assessments must be independent and consultative. In 2005, for example, the UN High Commissioner for Human Rights in its report to the 61st Commission on Human Rights recommended that human rights impact assessments “should be public and participatory, focus in particular on disadvantaged and vulnerable groups and highlight the differing impacts of projects and policies on men and women.”⁶¹ Human rights principles regarding access to information are clearly also relevant to the process of public consultation during impact assessments. It is important to note that existing human rights mechanisms not only recommend that governments undertake human rights impact assessments of intellectual property policies,⁶² but are also developing methodologies for these assessments.

C. Technical assistance

The WIPO Secretariat has an agreement with the WTO to provide technical assistance to developing countries on the implementation of the TRIPS Agreement.⁶³ WIPO also provides a number of other technical assistance services relating to IP policy. This technical assistance has been heavily criticized, including by the UK Commission on IP Rights, for promoting TRIPS-plus rules.⁶⁴ For instance, Musungu and Dutfield have criticized the WIPO Secretariat for not promoting the use of the flexibilities reiterated by the WTO Doha Declaration on TRIPS and Public Health.⁶⁵

The proposals put forward by WIPO Member States regarding technical assistance illustrate the different approaches to the WIPO Development Agenda. On the one hand the Friends of Development⁶⁶ and African Group⁶⁷ argue that technical assistance is of vital importance, but that WIPO’s efforts in this respect are problematic and should be reformed to address properly the needs of developing countries. Moreover, they insist that the call for a development agenda extends far beyond the realm of technical assistance. On the other hand, the US proposal⁶⁸ describes WIPO’s technical assistance as a positive development tool and the key component of a development agenda; it cites no problem with the conception or delivery of technical assistance and calls only for greater coordination, information-sharing and efficiency. This general view is also reflected in the Mexican and Bahrain proposals.⁶⁹

The Friends of Development Proposal requires that WIPO technical assistance be non-discriminatory, neutral, and based on actual and expressed needs. It also proposes that WIPO adopt a series of tools, such as Principles and Guidelines for Technical Assistance and a Code of Ethics for technical assistance providers. This approach is supported by human rights law, which requires that all policies be non-discriminatory and respond to the needs of the most vulnerable and marginalized individuals and groups.⁷⁰ The implementation of a Code of Ethics for technical assistance providers could also help ensure that countries do not adopt rules or policies that undermine their ability to comply with their human rights obligations.⁷¹

D. Access to knowledge

The Friends of Development proposal also covers a number of additional development issues, of which a Treaty on Access to Knowledge and Technology (A2K).⁷² The proposed A2K Treaty aims to respond to concerns that current trends in IP laws, particularly in relation to copyright, patents and databases, are limiting access to knowledge for public goods and thereby constraining innovation. Its objectives include increasing technology transfer to developing countries and promoting access by developing countries to the results of publicly funded research that might aid development. The principle of such a treaty is supported by the African Group proposal.⁷³ The Chilean proposal does not make explicit mention of the A2K Treaty, but supports the idea of stronger protection for the public domain, in order to increase the availability and dissemination of knowledge.

A number of human rights rules and mechanisms promote these objectives and could be harnessed as a supporting framework for the drafting of such a treaty. For example, human rights law calls for measures that respect, protect and fulfil the right to education,⁷⁴ the right to seek, receive and impart information which is part of the right to freedom of expression,⁷⁵ and the right to the enjoyment of the benefits of scientific progress and its applications.⁷⁶ These human rights all have access to information as a core element. Therefore, they can be

supportive of a treaty aimed at ensuring that IP rules and policies do not stifle access to public goods such as educational materials, public libraries, archives, commons databases, public broadcasts or publicly funded scientific research.

Conclusion

The WIPO Development Agenda process is an opportunity for WIPO Member States to mainstream development concerns into WIPO's activities and ensure that international IP systems take into account development goals and human rights obligations. Moreover, the WIPO Development Agenda discussions provide an invaluable opportunity for WIPO to embrace fully its UN specialized agency status and develop policies that are coherent with the development objectives of the UN as a whole. Human rights law supports more development-friendly IP policies. Development advocates and decision-makers can draw on human rights rules and mechanisms to ensure that IP policies are adapted to development goals and consistent with the human rights obligations of States.

Finally, it must not be forgotten that beyond WIPO are many additional fora where TRIPS-plus rules are being advanced. Most prominent in this respect are TRIPS-plus rules in bilateral and regional trade agreements which threaten realization of development goals and the fulfilment of human rights obligations. Beyond WIPO, bilateral technical assistance is also a source of concern. States which pursue TRIPS-plus policies, whether through WIPO, bilateral trade agreements or technical assistance are often acting inconsistently with their human rights obligations and those concerned with pro-development IP policies should use all available mechanisms to hold them accountable to their human rights obligations.

- ¹ QUNO/ QIAP, Sisule Musungu and Graham Dutfield, *Multilateral agreements and a TRIPS-plus world: the World Intellectual Property Organization (WIPO)*, TRIPS Issues Papers 3, 2003.
- ² WIPO's technical assistance activities are particularly significant as it also has responsibility for helping developing countries to implement the TRIPS Agreement. See Article 4, WIPO Document, *Agreement Between the World Intellectual Property Organization and the World Trade Organization*, WO/030/EN, 1995.
- ³ See *Geneva Declaration on the Future of the World Intellectual Property Organization*, September 2004 www.cptech.org
- ⁴ The "Friends of Development" proposal is co-sponsored by Argentina, Bolivia, Brazil, Cuba, the Dominican Republic, Ecuador, Egypt, Iran, Kenya, Peru, Sierra Leone, South Africa, Tanzania and Venezuela.
- ⁵ WIPO Document, *Proposal by Argentina and Brazil for the Establishment of a Development Agenda for WIPO*, WO/GA/31/11, 27 August 2004.
- ⁶ WIPO Document, *WIPO General Assembly, Thirty-First Session, September 27 to October 5 2004, Report*, WO/GA/31/15, 5 October 2004
- ⁷ WIPO Document, *WIPO General Assembly, Thirty-Second (17th Ordinary) Session, September 26 to October 5 2005, Report*, WO/GA/32/13, 5 October 2005.
- ⁸ Andrew Clapham and Susan Marks, *International Human Rights Lexicon*, Oxford University Press, May 2005, p. 97.
- ⁹ UNDP, *Human Development Report, Human Rights and Human Development*, 2000.
- ¹⁰ See article 2(1) ICESCR, as interpreted by CESCR General Comment No. 3 (1990), *The nature of States parties obligations*, 14 December 1990 and article 4 CRC, as interpreted by CRC General Comment No.5 (2003), *General measure of implementation*, 27 November 2003.
- ¹¹ The obligation for State parties to submit periodic reports to the treaty bodies is enshrined in article 16 ICESCR, article 40 ICCPR and article 44 CRC.
- ¹² CRC, *El Salvador, Concluding Observations*, CRC/C/15/Add.232, 30 June 2004.
- ¹³ WIPO Document, *Provisional Committee on Proposals Related to a WIPO Development Agenda, First Session, Geneva, February 20 to 24 2006, Proposal by Chile*, PCDA/1/2/, 12 January 2006.
- ¹⁴ These categories are based on the sub-division suggested by the Friends of Development in the following document: *Inter-Sessional Intergovernmental Meeting (IIM) on a Development Agenda for WIPO, Second Session, Work Programme for a Structured and Focused Debate on Proposals by Member States*, Geneva, 20 June 2005.
- ¹⁵ Article 3, *WIPO Convention*, 14 July 1967, as amended 28 September 1979.
- ¹⁶ Article 1, *Agreement between the United Nations and the World Intellectual Property Organization*, WIPO Publication No.111, Geneva, 1975.
- ¹⁷ Article 2, UN-WIPO Agreement. See also article 1.3, 55 and 56 of the UN Charter.
- ¹⁸ See for example Musungu and Dutfield, note 1 above.
- ¹⁹ In the event of a conflict between the obligations of Members States under the UN Charter and obligations under any international agreement, obligations under the Charter prevail. See article 103 of the UN Charter.
- ²⁰ WIPO Document, *Proposal to Establish a Development Agenda for WIPO: An Elaboration of Issues Raised in Document WO/GA/31/11, IIM/1/4*, 6 April 2005.
- ²¹ WIPO Document, *Proposal by Morocco on Behalf of the African Group Entitled "The African Proposal for the Establishment of a Development Agenda for WIPO," IIM/3/2*, 18 July 2005.
- ²² WIPO Document, *Proposal by the United States of America for the Establishment of a Partnership Programme in WIPO, IIM/1/2*, 18 March 2005.
- ²³ See article 2(1) ICESCR, as interpreted by CESCR General Comment No. 3 (1990), *The nature of States parties obligations*, 14 December 1990 and also article 4 CRC, as interpreted by CRC General Comment No.5 (2003), *General measure of implementation*, 27 November 2003.
- ²⁴ The scope of this obligation is further reinforced by the principle of good faith in international law which requires States to refrain from taking actions that defeat the object and purpose of a treaty. See article 18 of the Vienna Convention on the Law of Treaties.
- ²⁵ CESCR, *Concluding Observations, Ireland*, E/C.12/1/Add.77, 5 June 2002.
- ²⁶ See WIPO Documents, WO/GA/31/11 and IIM/1/4.
- ²⁷ See WIPO Document, IIM/3/2.
- ²⁸ WIPO Document, *Proposal by the United Kingdom, IIM/1/5*, 7 April 2005, and IIM/2/3, 14 June 2005.
- ²⁹ See WIPO Document, PCDA/1/2.
- ³⁰ See WIPO Document IIM/1/2.
- ³¹ WIPO Document, *Proposal by Mexico on Intellectual Property and Development, IIM/1/3*, 1 April 2005.
- ³² WIPO Document, *Proposal by the Kingdom of Bahrain on the importance of Intellectual Property in Social and Economic Development and National Development Programs, IIM/2/2*, 14 June 2005.
- ³³ See CESCR, General Comment No.1 (1989), *Reporting of States parties*, 24 February 1989.
- ³⁴ The right to health is enshrined in article 12 International Covenant on Economic, Social and Cultural Rights, as interpreted by General Comment No.14 (2000) and article 24 Convention on the Rights of the Child (CRC), as interpreted by General Comments No.3 (2003) on HIV/AIDS and the rights of the Child and General Comment No. 4 (2003) on Adolescent Health.
- ³⁵ The right to education is enshrined in article 13 ICESCR, as interpreted by General Comment No. 13 (1999), and article 28 CRC.
- ³⁶ The right to food is enshrined in article 11 ICESCR, as interpreted by General Comment No.12 (1999), and article 27, CRC.
- ³⁷ See article 15, ICESCR.
- ³⁸ The right to access information is enshrined in article 19 ICCPR, article 12 ICESCR, and article 13 and 17 CRC.
- ³⁹ The right to enjoy the benefits of scientific progress is enshrined in article 15 (1) (b) ICESCR.
- ⁴⁰ See WIPO Documents, WO/GA/31/11 and IIM/1/4.
- ⁴¹ The right to participate in public affairs is enshrined in article 25 ICCPR, as interpreted by General Comment No. 25 (1996), article 13 and 17 CRC, articles 7, 8 and 14 (2) CEDAW, and article 5 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).
- ⁴² See article 25, ICCPR.
- ⁴³ CERD General Comment No.23 (1997), *Indigenous Peoples*, paragraph 4(d).
- ⁴⁴ See articles 7, 8 and 14(2), CEDAW and article 5 ICERD.
- ⁴⁵ Musungu and Dutfield, note 1 above.
- ⁴⁶ See articles 12, ICESCR, article 6 ICCPR, and articles 6 and 24 CRC.
- ⁴⁷ See the groups which support the Access to Knowledge Treaty (A2K Treaty) at <http://www.cptech.org/a2k/>
- ⁴⁸ See articles 19 ICCPR, article 13 and 17 CRC, and article 15 (1) (c) ICESCR.
- ⁴⁹ See WIPO Documents, WO/GA/31/11 and IIM/1/4.
- ⁵⁰ See WIPO Document, IIM/1/4, paragraph 51.
- ⁵¹ See WIPO Document, IIM/3/2, paragraphs 8 and 11 (viii).
- ⁵² WIPO Document, *Proposal by the Kingdom of Bahrain on the importance of Intellectual Property in Social and Economic Development and National Development Programs, IIM/2/2*, 14 June 2005.

- ⁵³ WIPO Document, *Proposal by Mexico on Intellectual Property and Development*, IIM/1/3, 1 April 2005.
- ⁵⁴ Access to information is enshrined in the right to freedom of expression of article 19 ICCPR, as interpreted by General Comment No.10 (1983) and articles 13 and 17 CRC.
- ⁵⁵ See WIPO Document IIM/1/4, paragraph 49.
- ⁵⁶ See WIPO Documents, WO/GA/31/11 and IIM/1/4.
- ⁵⁷ See WIPO Document, IIM/3/2, paragraph 11 (viii).
- ⁵⁸ WIPO Document, IIM/3/3/Prov.2, 1 September 2005.
- ⁵⁹ See Committee on the Rights of the Child, El Salvador, Concluding Observations, CRC/C/15/Add.232, 30 June 2004
- ⁶⁰ Commission on Human Rights, Right to Development, *Report of the Working Group on the Right to Development on its sixth session*, Geneva 14-18 February 2005, E/CN.4/2005/25, 3 March 2005, paragraph 54.
- ⁶¹ See United Nations Commission on Human Rights, *Analytical Study of the High Commissioner for Human Rights on the fundamental principle of participation and its applications in the context of globalization*, *Report of the High Commissioner*, E/CN.4/2005/41, 23 December 2004.
- ⁶² See the recommendations made by the UN treaty bodies on IP issues at: http://www.3dthree.org/pdf_3D/TreatyBodyIPrefs_en.pdf
- ⁶³ Article 4, WIPO Document, *Agreement Between the World Intellectual Property Organization and the World Trade Organization*, WO/030/EN, 1995.
- ⁶⁴ UK Commission on IPRs, see note 10 above.
- ⁶⁵ Musungu and Dutfield, note 1 above.
- ⁶⁶ See WIPO Documents, WO/GA/31/11 and IIM/1/4.
- ⁶⁷ See WIPO Document, IIM/3/2, paragraph 11 (a) (i).
- ⁶⁸ WIPO Document, *Proposal by the United States of America for the Establishment of a Partnership Program in WIPO*, IIM/1/2, 18 March 2005
- ⁶⁹ See WIPO Document IIM/1/3 and IIM/2/2.
- ⁷⁰ See article 2 ICCPR, article 3 ICESCR, and articles 2 and 3 CRC.
- ⁷¹ See Carolyn Deere, "Elements for a Code of Ethics for Providers of IP Technical Cooperation" paper prepared for an ICTSD Dialogue on Sustainable Development and Intellectual Property entitled "Technical Cooperation for Intellectual Property Policy in Developing Countries", 11-12 July 2005, Geneva.
- ⁷² See WIPO Documents, WO/GA/31/11 and IIM/1/4.
- ⁷³ See WIPO Document, IIM/3/2, paragraph 11 (viii).
- ⁷⁴ The right to education is enshrined in article 13 ICESCR, as interpreted by General Comment No. 13 (1999), and article 28 CRC.
- ⁷⁵ See note 54 above.
- ⁷⁶ The right to enjoy the benefits of scientific progress is enshrined in article 15 (1) (b) ICESCR.

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