

## **UN Committee on Economic, Social and Cultural Rights Considers the Impact of Intellectual Property Rules on Human Rights**

### **Information Note 1**

**December 2004**

The UN Committee on Economic, Social and Cultural Rights looked more closely at the impact of intellectual property (IP) rules on human rights during its 33rd session, from 8-26 November 2004, than in previous sessions.

Of major concern to the Committee was the impact of strict IP rules on the ability of developing countries to ensure access to medicines for all. This issue was raised by the Committee during its monitoring of State obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR). Countries considered included Chile and two European Union (EU) member states – Denmark and Italy.

Also under scrutiny was the draft General Comment on article 15(1) (c) ICESCR which relates to the “protection of the moral and material interests” of authors. Discussions on the draft were very heated, as a number of Committee experts fear the dramatic consequences the text could have on policy work relating to IP and human rights, of which access to medicines and traditional knowledge. The Committee debate echoed concerns expressed by UN specialized agencies and NGOs regarding the draft. Adoption of the draft was post-poned until April 2005 at the earliest.

#### **1. EU members questioned on their international obligation to ensure access to medicines in other countries**

EU members Denmark and Italy came under close examination during this session of the Committee. The Committee experts asked questions about their national and international obligations to ensure access to generic medicines under the right to health (article 12 of the Covenant).

Most importantly, the experts asked what Denmark and Italy were doing to ensure that developing countries could use all the flexibilities under the WTO Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS Agreement) to ensure access to generic drugs. They also wanted to know what their position was regarding the EU’s implementation of the generic drug import/export mechanism under the WTO General Council Decision of 30 August 2003 (WTO General Council Decision).

The Danish and Italian delegations replied by confirming their commitment to the WTO Doha Declaration on TRIPS and Public Health which reaffirms developing countries’ ability to use all the flexibilities in the TRIPS Agreement to obtain cheap medicines. In a written reply to the Committee, Denmark explicitly confirmed its commitment to “gaining maximum flexibility within the existing framework for developing countries and the least developed.”

Also, both Denmark and Italy expressed their support for the European Commission's (EC) draft regulation implementing the WTO General Council Decision, published on 29 October 2004. Denmark committed to "swiftly" incorporating the final regulation into national legislation and ensuring it was implemented "in the spirit" of the Doha Declaration and General Council Decision. Italy said that it would do its best to "contribute to a favourable implementation" within the EU.

Denmark and Italy are bound to take measures to implement the commitments they expressed in session.

## 2. Chile recommended to provide greater access to generic medicines

The Committee also made an express recommendation to Chile regarding access to affordable medicines. This issue has become particularly problematic since Chile began implementing the strict IP rules included in the US-Chile Free Trade Agreement (FTA) which came into force on 1 January 2004. Strict IP rules risk raising the cost of essential medicines and limiting access, which will hit the poor hardest.

The Committee recommendation encourages the Chilean government to "provide access to generic medicines making use of the flexibility clauses permitted by the WTO Agreement on Trade-related Aspects of Intellectual Property Rights (the TRIPS Agreement)." These flexibilities include the use of compulsory licenses to obtain cheaper generic versions of drugs.

## 3. IP and Human Rights: heated discussions on the draft General Comment on article 15(1)(c) ICESCR

The Committee had a day and a half of intense discussions on the draft General Comment on article 15(1) (c) ICESCR, which relates to the author's right to "protection of moral and material interests resulting from any scientific, literary or artistic production." The Committee member who had prepared the draft hoped to adopt the General Comment at this session, but strong concern about the political impacts of the draft led to it being postponed until April 2005 at the earliest.

Several Committee experts expressed strong concern that without proper distinction between intellectual property rules and human rights, the General Comment could undermine efforts to ensure access to affordable medicines or the protection of traditional knowledge. These Committee experts were particularly worried that the current draft could be misused to promote strict IP protection as a way to realize article 15(1)(c) ICESCR. This could have dramatic political consequences, especially for developing countries that are trying to ensure that bilateral and regional trade agreements do not include strict IP rules that violate human rights.

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