

Human rights and the establishment of a WIPO Development Agenda

Information Note 5¹

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Over the past two years, discussions on a World Intellectual Property Organization (WIPO) Development Agenda have provided a forum for Member States to challenge the current trends in intellectual property (IP) policy-making and work towards a system that is more consistent with development commitments and needs. The second session of the Provisional Committee on Proposals for a WIPO Development Agenda (PCDA), from 26 to 30 June 2006, will provide an opportunity for Member States to consider proposals in clusters of issues² and submit a decision for a WIPO Development Agenda to the WIPO General Assembly in September 2006 that will dictate the future of these discussions.³

This note provides advocates, policy-makers and WIPO Member States with a brief outline of the human rights arguments that support proposals for a WIPO Development Agenda. This note aims to encourage Members States to draft a decision on the future of this agenda that is consistent with their human rights and development commitments. The structure of this note is based on the clusters of proposals in the Summary of the PCDA Chair.

A. Technical assistance and capacity building

Human rights law requires States to take steps “individually and through international assistance and cooperation, especially economic and technical” to fulfil their human rights obligations.⁴ Moreover, such assistance should be non-discriminatory and respond to the needs of the most vulnerable and marginalized groups.⁵ Therefore, human rights require that guidelines and disciplines for technical assistance ensure that assistance is devised and provided in a transparent, independent, participatory, needs-based and targeted way to the most vulnerable groups.

B. Norm-setting, flexibilities, public policy and public domain

Human rights law requires that States act in a transparent, participatory and human rights-consistent manner when they engage in norm-setting activities. For example, for participatory

¹ This note is based on ideas expressed in the *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, published by 3D -> Trade - Human Rights - Equitable Economy (3D) in February 2006. For further information see: www.3dthree.org

² See WIPO Document, *Summary by the Chair, Annex, Proposals by Clusters Submitted for a WIPO Development Agenda*, Provisional Committee on Proposals Related to A WIPO Development Agenda (PCDA), First Session, 20 to 24 February 2006.

³ See WIPO Document, *Proposals on the Decision of the PCDA on the Establishment of a WIPO Development Agenda*, PCDA 2/2, 23 June 2006.

⁴ See article 2 (1), International Covenant on Economic, Social and Cultural Rights (ICESCR), as interpreted by General Comment No.3 (1990), *The nature of State party obligations*, 14 December 1990. See also article 4 of the Convention on the Rights of the Child (CRC), as interpreted by General Comment No.5 (2003), *General Measures of Implementation*, 27 November 2003.

⁵ See article 2 ICCPR, article 3 ICESCR, and articles 2 and 3 CRC.

rights to be respected and participatory processes to be fully transparent, it is essential that Member States ensure access to information and the right to seek, receive and impart information in all aspects of decision-making.⁶ Therefore, human rights law requires principles and guidelines for WIPO norm-setting activities that require transparency, public participation and consistency with international human rights agreements.

C. Technology transfer, information communication technology (ICT) and access to knowledge

A number of human rights rules and mechanisms can support initiatives for greater transfer of technology and access to knowledge. For example, the obligation of international assistance and cooperation in the fulfilment of human rights could provide support for a human rights-consistent approach to technology transfer and information communication technology (ICT).⁷

Moreover, the right to seek, receive and impart information which is part of the right to freedom of expression, the right to the enjoyment of the benefits of scientific progress, or the child's right to access information and material from a diversity of national and international sources⁸ could provide a framework for a Treaty on Access to Knowledge which ensures that IP rules do not impede access to public goods.

D. Assessments, evaluation and impact studies

Human rights law requires states to monitor public policies and ensure that these policies contribute to the full realization of human rights. It precludes States from agreeing to measures or policies that constitute a move away from the enjoyment of human rights, and requires that States ensure that policies do not result in discrimination in the enjoyment of human rights. To this end, a number of human rights mechanisms have recommended that States undertake impact assessments of intellectual property policies, particularly before agreeing to new commitments.⁹ Therefore, human rights law requires impact assessments and evaluations of WIPO norm-setting and technical assistance in order to ensure that such activities do not impede the realization of human rights, nor constitute a move away from the realization of development objectives.

E. Institutional matters including mandate and governance

Human rights rules and mechanisms require that members of international organizations – including the United Nations - must ensure that their policies and decisions are in conformity with their human rights obligations.¹⁰ Therefore, Member States of WIPO should ensure that WIPO's mandate and activities are in conformity with their human rights and development commitments and their actions in other United Nations organs.

Conclusion:

The WIPO Development Agenda process provides Member States of WIPO with an opportunity to respond to the challenges and threats posed by the current international IP system. Therefore, it is important that Member States use this process to achieve a WIPO Development Agenda that will allow them to comply with their human rights and development commitments. Hence, it is crucial that Member States agree to an actionable decision on how to carry the process forward, whether in the form of additional PCDA meetings or a high-level declaration on IP and development.

⁶ See article 19 ICCPR, and articles 13 and 17 CRC.

⁷ See note 4 above.

⁸ See article 19 ICCPR, article 15(1) (b) ICESCR and article 17, CRC respectively.

⁹ See for example, Committee on the Rights of the Child, El Salvador, *Concluding Observations*, CRC/C/15/Add.232, 30 June 2004.

¹⁰ See CESCR, *Concluding Observations, Ireland*, E/C.12/1/Add.77, 5 June 2002.