

## **PRESENTATION TO THE WORKING GROUP ON THE RIGHT TO DEVELOPMENT**

**18 AUGUST 2008**

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Thank you Mr Chairman.

As you know, 3D → Trade - Human Rights - Equitable Economy is a Geneva-based NGO, which promotes collaboration amongst trade, development and human rights professionals. The overall objective of our work is to ensure that trade and trade-related rules are developed and applied in ways that promote an equitable economy. In recent years we have given special attention to ensuring that Intellectual Property (IP) policy does not unduly affect the enjoyment of human rights.

We welcome the work of the Working Group on the Right to Development, and particularly of the High Level Task Force (HLTF), towards making the right to development effective.

In particular we welcome the development of the criteria for evaluation of global development partnerships. These will be a hugely valuable tool for those of us working to ensure that trade and intellectual property rules and related policies are consistent with States' human rights commitments.

I take this opportunity to mention that we at 3D are organizing, during the forthcoming World Trade Organization (WTO) Public Forum, on 24<sup>th</sup> September, a session on trade and human rights, which will feature a presentation of the criteria and the approach of this Working Group and its High Level Task Force.<sup>1</sup> The session is organized in collaboration with the Office of the High Commissioner for Human Rights.

The main purpose of my presentation today is to raise our concerns regarding trends in intellectual property policy worldwide and invite the HLTF to focus on these, particularly on processes currently underway within the World Intellectual Property Organization (WIPO) that could have lasting effects on IP policy and on the enjoyment of human rights, including the right to development.

First though, I would like to comment on the part of the report of the HLTF that refers to the Economic Partnership Agreements (EPAs) between the European Union (EU) and African Caribbean and Pacific states (ACPs).<sup>2</sup>

The report mentions that EPA negotiations on trade need to take into account the needs of developing and least developed countries. This is of course true but it must also be stressed that from a human rights perspective there is need for attention to the most vulnerable within

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<sup>1</sup> For more details, visit 3D [www.3dthree.org](http://www.3dthree.org) or the WTO Public Forum '08 [http://www.wto.org/english/forums\\_e/public\\_forum08\\_e/programme\\_e.htm](http://www.wto.org/english/forums_e/public_forum08_e/programme_e.htm)

<sup>2</sup> *UN Human Rights Council*, Eighth session, Working Group on the Right to Development, Report of the high-level task force on the implementation of the right to development on its fourth session, 31 January 2008, A/HRC/8/WG.2/TF/2, <http://daccessdds.un.org/doc/UNDOC/GEN/G08/103/86/PDF/G0810386.pdf?OpenElement>

countries, and to ensure that economic or other policies do not risk making their situation worse over time.

We find it difficult to be satisfied by the EC's response that 'A number of points in the consultant's study were misleading and led to wrong conclusions, including the strong criticism of the European Common Agricultural Policy, indicating that EPAs completely opened the European markets to ACP products.'<sup>3</sup> Indeed, European markets may be more open to imports from ACP countries in the future but this is not the crux of the issue. Amongst other more significant issues is the fact that dumping of subsidized products from EU countries has caused great harm, not least because it has displaced local production. This has severe consequences, more harshly severe at times – like now – when food is not available for import on international markets. Moreover, the removal of public support for small-scale producers, and the trend that the EPAs promote towards increased liberalization and export-oriented approaches fulfill neither the development nor the human rights needs of most ACP countries, nor of their large number of small-scale and subsistence farmers. We analyze this in more detail in a paper we published on Niger and agricultural trade liberalization, which looks in more detail on human rights consequences of an EPA.<sup>4</sup>

About IP policy, we welcome the HLTf's interest in the issue as this is a hugely important area at the moment. Changes made in this area are happening with little public scrutiny or accountability and can have lasting effects on the enjoyment of a range of human rights, including the Right to Development.

Indeed, the current trend tends to favour the monopoly privileges of intellectual property (IP) rights holders who are primarily in rich countries. This excludes developing countries from access to medicines, educational materials or other technologies, thus jeopardizing many of their opportunities for economic development. For instance, it has ably been documented how strict IP standards are hindering access to educational materials, affecting the right to education – and thus the right to development.<sup>5</sup> IP standards are also making it harder to access seeds and other agricultural inputs, making it harder for the majority of the world's poor, who depend on farming, to feed themselves.<sup>6</sup> And there is probably no need for me to explain to this audience how stricter IP standards have affected access to medicines.

It is impossible to understate the severe effects these trends are having, on countries' development potential and on the enjoyment of human rights including the right to development. Whilst these trends took hold through the multilateral trade regime (namely the WTO's Agreement on Trade-Related Intellectual Property Rights (TRIPS)) it is important to note that they are being amplified through bilateral trade agreements. They are also amplified through the 'technical assistance' that WIPO provides to developing countries, and that has widely been criticized for promoting strong IP standards that suit the interests of private business primarily in industrialized countries. Bilateral trade agreements tend to be negotiated with little public debate or participation, and the technical assistance is provided with even less public scrutiny, contrary to human rights principles.

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<sup>3</sup> *Ibid.*, paragraph 43.

<sup>4</sup> 3D, *Niger: Agricultural trade liberalization and women's rights*, 2006, [http://www.3dthree.org/pdf\\_3D/3DCEDAWNigerAg.pdf](http://www.3dthree.org/pdf_3D/3DCEDAWNigerAg.pdf)

<sup>5</sup> For a more detailed description of how this occurs, visit The African Copyright & Access to Knowledge Project (ACA2K), <http://www.aca2k.org>

<sup>6</sup> See for instance, Geoff Tansey and Tasmin Rajotte (eds), *The Future Control of Food*, Earthscan 2008, [http://www.idrc.org/en/ev-118094-201-1-DO\\_TOPIC.html](http://www.idrc.org/en/ev-118094-201-1-DO_TOPIC.html)

When one considers that over 90 percent of WIPO's budget is derived from fees for services it provides to IP holders (less than 10 percent of its budget is from its Member States' contributions in contrast to other UN organisations whose budgets are financed primarily through Member contributions) it is hardly surprising that, though nominally a member of the UN family, WIPO can easily become beholden to the private interests that finance it instead of upholding the standards of the UN system.

There are however now new and heartening developments within WIPO that permit optimism that IP policy can be made more accountable, more development-friendly, and more consistent with the right to development.<sup>7</sup>

Of prime note amongst these is WIPO's newest and potentially highest impact Committee:<sup>8</sup> the Committee on Development and Intellectual Property (CDIP). This Committee was set up to ensure that all of the organisation's activities are development-friendly. It was convened as part of what is known as 'the WIPO Development Agenda,' an initiative first proposed by Brazil and Argentina in 2004. The Development Agenda was intensively negotiated until WIPO membership agreed on 45 recommendations at the General Assembly in 2007.<sup>9</sup> The Assembly created the CDIP and gave it a mandate to implement the recommendations, which is still in the process of doing.

As the HLTF has been considering which additional partnerships to consider in phase II, - and as Professor Marks has just said, exploring how to expand its thematic focus – and has specifically indicated its interest in undertaking further reflection on the relationship between intellectual property and human rights with a view to identifying criteria for the periodic evaluation of this aspect of MDG 8, we believe this would be a very strong partnership to look at more closely. It covers different aspects of IP policy relating to different aspects of the right to development, including aspects that affect medicines, access to information, the right to food, technology transfer, innovation and economic development.

The CDIP process holds great potential and this potential will best be realized if there is broad participation in the process – participation not only by IP specialists and those with private sector interests, but particularly participation from developing country officials, human rights professionals and others concerned with ensuring respect for ECOSOC principles and policy coherence throughout the UN system.

An interest by the HLTF in this process would help draw the process to public attention and contribute to a much-needed increase in the accountability of WIPO's activities. Even if the HLTF does not decide to consider the CDIP process, we hope that the Working Group on the Right to Development as well as human rights advocates in this room, will participate in the process and continue to keep it under scrutiny, to ensure accountability and consistency with the right to development.

Mr Chairman, I thank you for your time.

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<sup>7</sup> See for instance, Geneva Declaration on the Future of the World Intellectual Property Organization, <http://www.cptech.org/ip/wipo/genevadeclaration.html>

<sup>8</sup> William New, 'WIPO Development Committee Ends First Year On Mostly Agreeable Note,' *Intellectual Property Watch*, 12 July 2008, <http://www.ip-watch.org/weblog/index.php?p=1147>

<sup>9</sup> World Intellectual Property Organization (WIPO), *The 45 Adopted Recommendations under the WIPO Development Agenda*, 2007, , <http://www.wipo.int/ip-development/en/agenda/recommendations.html>