



# Framing Access to Knowledge in Human Rights Terms

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## **Access to knowledge (A2K) - a crucial basis for the enjoyment of human rights**

- A2K can support a pro-development approach to IP policy-making that is consistent with development commitments and human rights obligations
- A2K can help achieve greater transparency and public participation in policy-making, in compliance with human rights.
- A2K can support individuals and vulnerable groups in claiming their human rights; including the right to education, the right to food, the right to health, the right to take part in cultural life and the right to enjoy the benefits of scientific progress and its applications.



## **Framing A2K in human rights terms: freedom of information as key element – int. norms**

- The right to freedom of expression includes “freedom to seek, receive and impart information and ideas of all kinds”  
Art. 19, UDHR, ICCPR & art.13 (1), CRC
- The right of the child to “access information and material from a diversity of national and international sources”  
Art. 17, CRC



## **Framing A2K in human rights terms: freedom of information as key element – reg. norms**

- Art. 13, American Convention on Human Rights and the Inter-American Declaration of Principles on Freedom of Expression, 2000.
- Art. 9, African Charter on Human and People's Rights and the Declaration of Principles on Freedom of Expression in Africa.
- Art. 10, European Convention on Human Rights and art. 42, Charter of Fundamental Rights of the European Union 2000.



## **Framing A2K in human rights terms: economic, social and cultural rights**

- The right to education – access to education  
Art. 26 UDHR, art.13 ICESCR & art. 29 CRC
- The right to adequate food – access to food  
Art. 25 UDHR, art. 11 ICESCR & art. 27 CRC
- The right to health – access to affordable medicines  
Art. 24 UDHR, art. 12 ICESCR and art. 24 CRC



## **Framing A2K in human rights terms: economic, social and cultural rights**

- The right to take part in cultural life  
Art. 27 (1) UDHR, & art. 15(1)(a) ICESCR
  - The right to enjoy the benefits of scientific progress and its applications  
Art. 27 (1) UDHR & art. 15 (1) (b) ICESCR
- includes respect for the freedom indispensable for scientific research and creative activity



## **Framing A2K in human rights terms: the right to development**

- The right to development - includes public participation in and control of the direction of development and participation in the benefits of development.

Declaration on the right to development, GA res. 41/128, 4 December 1986



## **Framing A2K in human rights terms: the confusion between IP rights and human rights**

- The right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author - aims to protect natural persons.  
Art. 27 (2) UDHR, art. 15(1)(c) ICESCR
- Protection of this human right may not coincide with IP rights, nor should it harm other human rights. See CESCR GC No.18 (2005)



## Human rights tools and instruments available to support A2K

Transparency and accountability mechanisms:

- UN human rights mechanisms: human rights treaty bodies (CESCR, CRC, HRC), Special Rapporteurs (see Special Rapporteur on the right to health)
- Regional mechanisms: i.e. the Inter-American Court of Human Rights (see the first access to public information case: *Marcel Claude Reyes and Others v. Chile*)



## Usefulness of framing A2K in human rights terms

- Human rights are fundamental legal rights that Governments are obliged to *respect, protect and fulfil*.
- Human rights rules and mechanisms provide tools to hold governments and economic actors accountable.
- Human rights mechanisms have recommended that State parties undertake human rights impact assessments of IP rules (see treaty bodies, Special Rapporteur on the right to health and Task Force on Right to Development).



## Limits of framing A2K in human rights terms

- Although human rights obligations are binding on State parties, enforcement is mostly exercised by political pressure instead of litigation
- Certain countries – the US in particular - that have not ratified human rights treaties (ICESCR, CRC or the Protocol of San Salvador) do not recognize the justiciability of economic, social and cultural rights.
- IP rights-holders have tried to distort human rights language to argue that IP rights are human rights



## Using human rights-based language to support A2K in relation to patents and copyright

- Patents: i.e. The State must ensure respect for the views of the child and access to information on the impact of proposed patent rules on children's health, when planning and negotiating trade-related IP rules (see art. 12, 13(1) and 17 CRC).
- Copyright: i.e. The State must use limitations and exceptions to ensure that copyright rules do not undermine economic accessibility of education (see art. 13 ICESCR and art. 29 CRC)



## Examples of A2K initiatives using human rights-based language

- A2K draft treaty – preamble
- Adelphi Charter – preamble
- Second Manifesto of “Hipatia”
- “Friends of Development” proposal for the establishment of a World Intellectual Property Organization (WIPO) Development Agenda

Brazil and Peru, oral statements to the WIPO Provisional Committee on Proposals Related a WIPO Development Agenda (PCDA), February 2006



## Avenues for action: using human rights to support an A2K movement

- Use human rights norms to frame A2K initiatives and a pro-development approach to IP policy-making.
- Use human rights tools and mechanisms to achieve greater transparency and public participation in IP policy-making that affects A2K.
- Ensure that drafting, negotiation and implementation of IP policy affecting A2K is consistent with development commitments and human rights obligations
- Use human rights impact assessments to assess effect of IP rules on A2K
- Bring test cases at the national, regional and international level using human rights to challenge IP rules that undermine A2K.



3D -> Trade - Human Rights - Equitable Economy promotes collaboration amongst trade, development and human rights professionals, to ensure that trade rules are developed and applied in ways that promote an equitable economy.

Our Objectives are :

- > To promote collaborative efforts between people working to promote an equitable economy,
- > To strengthen the capacity of human rights advocates to raise their concerns with trade decision-makers,
- > To encourage the use of human rights mechanisms and rules in support of efforts to promote an equitable economy, and
- > To ensure accountability of all economic actors.

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