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HUMAN RIGHTS COUNCIL  
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Working Group on the Right to Development  
High Level Task Force on  
the implementation of the right to development  
Sixth session  
Geneva, 14-22 January 2010  
Item 4 (b) of the provisional agenda

**IMPLEMENTATION OF THE RECOMMENDATIONS OF THE  
WORKING GROUP ON THE RIGHT TO DEVELOPMENT, ENDORSED  
BY THE HUMAN RIGHTS COUNCIL IN RESOLUTION 12/23**

**MILLENNIUM DEVELOPMENT GOAL 8, TARGET F,  
ON TECHNOLOGY TRANSFER**

**Technical mission in order to review the WIPO Development Agenda from the  
perspective of its contribution to the realization of the right to development**

**Geneva, 13-17 July 2009**

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## Introduction

1. The high-level task force on the implementation of the right to development was established by the Commission on Human Rights in its resolution 2004/7, within the framework of the intergovernmental open-ended Working Group on the Right to Development, in order to assist it in fulfilling its mandate as reflected in paragraph 10 (a) of Commission resolution 1998/7.
2. The Human Rights Council, in its resolution 9/3, and the General Assembly, in its resolution 63/178, endorsed the workplan for the task force for the period 2008-2010, as recommended by the Working Group in its report on its ninth session (A/HRC/9/17, para. 43).
3. The Council, in its resolution 12/23, endorsed the recommendations of the Working Group adopted by consensus at its tenth session and which, *inter alia*, requested the task force to "... attend the Conference on Intellectual Property and Public Policy organized by the World Intellectual Property Organization in Geneva in July 2009, and hold consultations to gather information on the Development Agenda of WIPO in relation to the realization of the right to development ..."<sup>1</sup>
4. Consequently, the task force undertook a technical mission from 13 to 17 July 2009, in Geneva, Switzerland, in order to review the WIPO Development Agenda from the perspective of its contribution to the realization of the right to development. This process is intended to stimulate inclusion of the right to development principles in the work of global partnerships, as well as to contribute to the development of criteria for the assessment of compliance with the right to development.
5. The mission team consisted of Professor Sakiko Fukuda-Parr, member of the task force, and Mr. Materneau Chrispin, OHCHR staff. The team attended the WIPO Conference on Intellectual Property and Public Policy Issues and met with a number of individuals from the WIPO Secretariat, delegations, and experts.

## I. BRIEF BACKGROUND OF THE WIPO DEVELOPMENT AGENDA

6. In 2007, the WIPO General Assembly adopted a set of 45 recommendations that has been branded the Development Agenda of the organization. It is an initiative spearheaded by several developing countries (among which Argentina and Brazil played a leading role) aimed at making WIPO, its legal framework and activities more development-oriented so that intellectual property rights policy is dealt with within the broader context of economic, social development and the public interest. The 45 recommendations include areas of: technical assistance and capacity building; norm-setting, flexibilities, public policy and public domain; technology transfer, information and communication technology (ICT) and access to knowledge; assessment, evaluation and impact studies; and institutional matters, including mandate and governance.
7. Progress has been made in setting up a process of the implementation of the WIPO Development Agenda. In particular, the WIPO General Assembly selected 19 of the recommendations for immediate implementation. It created the Committee on Development and

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<sup>1</sup> See A/HRC/12/28, para. 46(e)(i).

Intellectual Property in order to develop a work programme, monitor implementation and coordinate with other relevant WIPO bodies, and to discuss intellectual property rights and development related issues. Implementation of the actionable items has so far been organized through 5 projects, 2 of which were approved at the third session of the Committee held in April and May 2009.

## **II. SUMMARY OF DISCUSSIONS**

8. All the interlocutors whom the mission team met concurred that the WIPO Development Agenda was a very positive development that has brought about tremendous change in the institutional culture and the activities of WIPO. It introduced an important change in the language used by the organization, by giving more legitimacy to the development dimension and implications of the intellectual property protection regime; and to the concerns and interests of developing countries.

9. They all recognized that the implementation of the Development Agenda is a process that will take time and require sustained efforts on the part of all concerned stakeholders. They also expressed their desire to see that process speed up. Several reasons for the slow implementation of the WIPO Development Agenda were identified:

- (a) Lack of a comprehensive and coherent strategy for its implementation;
- (b) Difficulty to reach consensus among Member States in the Committee;
- (c) Lack of an effective monitoring and evaluation system; and
- (d) The fact that the WIPO Development Agenda has only recently been put in place and that its implementation is subject to a learning curve.

10. Some interlocutors emphasized the importance of mainstreaming the Development Agenda principles within all the activities of the organization and the need for greater coordination and cooperation between WIPO and other UN agencies.

11. Several of them stressed the crucial need for the technical assistance activities of WIPO, which is an important dimension of the Development Agenda, to be brought in line with the recommendations contained in the Agenda. It was thus mentioned that technical assistance activities by WIPO needed to be conducted in a more transparent, inclusive and systemic manner so as to effect a proper implementation of the Development Agenda.

## **III. SUMMARY OF FINDINGS**

### **A. The WIPO Development Agenda and the Right to Development**

12. The WIPO Development Agenda is one of the most – and arguably the most - important of the current global initiatives in advancing the realization of the right to development. Other major global issues such as trade and aid have not seen much action while the WIPO Development Agenda marks a watershed in addressing development in the governance of global technology. Although the Agenda does not directly refer to the right to development, the basic motivations and objectives of the agenda are aimed at establishing an enabling environment at

national and global levels that facilitates equitable, sustainable and participative process of development. While technology plays an important role in development – especially to the achievement of the MDGs (recommendation 22) – intellectual property systems can have both positive and negative repercussions and be distributionally uneven. Thus, implementation of the WIPO Development Agenda responds directly to a core obligation to promote the right to development in the context of the present economic and technological environment.

13. There are important connections between intellectual property rights and the right to development. Intellectual property is a policy tool that serves an important public purpose of providing incentives for technological advance beneficial to human well being. Its impacts on innovation and access are complex. Some of the implications can conflict with the right to development in the following ways: (i) access to the public goods technology that is important for the enjoyment of many human rights can be restricted, e.g. essential medicines may be unavailable or priced out of reach; (ii) in certain contexts, intellectual property rights may discourage innovation and supply of public goods that are important for enjoyment of human rights by raising the costs of research and development that require licensing patented technologies, e.g. numerous costly licenses were required in developing ‘Golden rice’ and negotiated; (iii) distribution of intellectual property rights ownership is highly skewed, with the overwhelming majority of intellectual property rights being held by a few leading technologically-developed countries leaving developing countries at a disadvantage; (iv) the distribution of innovation is highly skewed as the intellectual property rights system provides incentives for innovations that produce market returns and is of little use in stimulating investment in poor peoples’ technology needs such as medicines for malaria; (v) intellectual property rights systems conceptualized in an industrialized country context does not provide for the rights of protection of traditional knowledge and community owned resources; and (vi) tight intellectual property rights systems reduce opportunities for technology transfer for developing countries to ‘catch up’ with the technological environment of the developed countries, e.g. the opportunities to innovate through reverse engineering which played a key role in the technological upgrading of the East Asian ‘tigers’ and ‘cubs’. These factors can create an environment nationally and globally that are not favorable to the realization of the right to development.

14. The factors that gave rise to the adoption of the WIPO Development Agenda are the experience of the 1990s when increasing concerns were raised regarding the impact of the TRIPS agreement on pharmaceutical prices and access to life saving medicines, and the controversies over the implementation of flexibilities, as well as other intellectual property rights conventions. As recognized in the WIPO Development Agenda, each country has a unique situation and the intellectual property rights regime adopted, while adhering to international obligations, need to be tailored to their needs and conditions. WIPO is an important source of technical assistance for capacity building, and an important component of the Development Agenda is to improve the effectiveness of this activity. From the right to development perspective, a challenge is to develop a better understanding of the complex relationship between intellectual property policy and development outcomes so that such understanding can strengthen national policies. The experience of developing countries such as Brazil, India and China may be particularly appropriate for capacity development as is the expertise of development agencies in broader economic policy issues.

15. The WIPO Development Agenda addressed these key concerns that are central to the right to development; this can be further examined by using the framework criteria proposed by the task force in 2009.<sup>2</sup>

1. Comprehensive human-centered:

(a) Indivisibility and interdependence of human rights in development: these principles are not explicitly recognized nor are human rights instruments mentioned, but the recommendations for intellectual property rights systems to respond to national contexts and national priorities, including greater collaboration with other UN agencies that are concerned with a wide range of challenges within a country context, as well as the support to the use of TRIPS flexibilities (recommendation 14) reflect an attempt to consider intellectual property policy within a holistic, human centered development context;

(b) Human rights based outcomes: some of the key principles are explicitly recognized as important objectives including equality (recommendation 25), non-discrimination (accommodating traditional knowledge – recommendation 18), participation and transparency (especially in more nationally driven technical assistance, transparent and participative norm setting arenas – recommendations 5, 13, 15, 21) and accountability (Development Agenda recommendation 6, evaluation and impact assessment - recommendations 33-39) protection of traditional knowledge (recommendation 18);

(c) Sustainable development: this is reflected in the explicit reference to MDGs (recommendation 25).

2. Enabling environment:

(a) International cooperation and assistance: the technical assistance is a main cluster in the WIPO Development Agenda, and is particularly concerned with the nature rather than the quantity of this assistance, which has been the critical issue;

(b) National policy space and autonomy: this is an overall objective of the WIPO Development Agenda that is more specifically reflected in support of intellectual property policies that are appropriate to the national context and to the level of development (recommendation 1), the support to TRIPS flexibility (recommendation 14), traditional knowledge (recommendation 18);

(c) Rule of law and good governance: this is reflected in recommendations for greater transparency, participation and good governance as noted above;

(d) Peace, security and disarmament: this is not explicitly reflected, although access to technology has a role to play.

3. Social justice and equity

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<sup>2</sup> See A/HRC/12/WG.2/TF/2, Annex IV.

Non-discrimination and inclusion: greater inclusion of developing countries as regards global technology is an overall objective of the WIPO Development Agenda. The Agenda does not explicitly address issues of groups within countries who are vulnerable, excluded or discriminated against on grounds of gender, ethnicity, race, national origin. The recommendations for traditional knowledge (18) are the only relevant one.

## **B. Current Situation and Key Issues**

16. The WIPO Development Agenda has enormous potential for advancing the right to development. However, this will depend on implementation which is still in the early stages. What is recognized, however, is that the adoption of the WIPO Development Agenda was in itself a major achievement that has involved a ‘culture change’ in WIPO’s Secretariat and the governing body. It is in fact a normative shift that has already occurred that is not negligible for furthering the right to development.

17. Implementation has been somewhat slow in that so far progress has been made only in setting up implementation modalities and agendas rather than in actual implementation. However, most observers give the WIPO Secretariat and governing body the ‘benefit of the doubt’ that best efforts are being made. This is a process that is very challenging, mainly due to the political sensitivity of the issue.

18. Indeed, it is fraught with controversy and divisions that were at the origins of the creation of the Agenda, which is, as one interlocutor observed, the result of the efforts of the international community as a whole to compromise in order to move forward. Intellectual property rights and their impact on development, including the right to development, have been a highly divisive issue marked by controversies over some key questions around the complex relationships between intellectual property rights and the innovation and diffusion processes, between intellectual property rights and distribution, and so on. Different stakeholders in public, private and civil society sectors – governments of patent-rich countries, governments of technology-poor countries, technology-based corporations, scientists, development NGOs, human rights NGOs, relevant civil society actors such as consumers, producers, farmers, persons living with HIV/AIDS, academics as well as policy makers and national delegations hold positions and views that reflect deeply entrenched divisions.

19. At this juncture, it would serve the purposes of the right to development to recognize some issues during the implementation process:

(a) WIPO’s neutrality and inclusive process – politics including lobbies behind intellectual property rights need to be openly recognized so that WIPO processes can be neutral with respect to the tensions between the interests of developed and developing countries, between the technology corporations and consumers, between farmers of indigenous communities and corporations, between the researchers associated with different groups. In this perspective, the programme of the Conference on Intellectual Property and Public Policy Issues was not balanced since it did not include speakers from civil society nor academics from developing countries, and was overwhelmingly male dominated with only 3 of the 28 speakers being women;

(b) Knowledge of appropriate intellectual property policies – the challenge of intellectual property for development is an area where innovation is needed. The knowledge base for such work perhaps resides in the ‘South’ rather than in the ‘North’. Valuable technical assistance may come from such sources either through bilateral arrangements or through multilateral channels such as UNDP, World Bank, regional banks, UNCTAD, UNIDO, etc. as well as WIPO;

(c) Harmonization – from the right to development perspective, the Development Agenda recommendations of a normative rather than action-oriented nature are particularly important and can only be implemented unless they influence comprehensively the various aspects of WIPO’s activities.

#### **IV. CONCLUSIONS AND RECOMMENDATIONS**

20. Review of the WIPO Development Agenda from the right to development perspective provides some useful lessons for further refinement of the right to development criteria. They proved useful in considering their contribution to a human rights-based process and outcomes with social justice and equity, and they also capture issues of enabling environment including national policy space and autonomy, innovation and access to global technology as public goods, and equitable sharing of the benefits of development.

21. The global enabling environment component of the right to development criteria should make an explicit mention of technology, as it is a crucial element that can help developing states to achieve their development goals. Criteria that can contribute to improvement towards a better and fairer international framework for sharing and transferring technology between the more technologically advanced and the developing countries can only benefit the full realization of the right to development.

22. More generally, mainstreaming development in intellectual property policy requires innovation and new understanding of the complex relationships between the two. The WIPO needs to continue the quest for new analytical approaches in this regard that are fully informed by the right to development criteria.



**Annex**

**Programme of mission**

***13 July 2009, Monday***

3:30 PM - Mr. Irfan Baloch, Acting Director of WIPO Development Agenda Secretariat

***14 July 2009, Tuesday***

10:45 AM - Mr. Ahmed Abdel Latif, Intellectual Property and Technology Programme Manager, International Center for Trade and Sustainable Development

***15 July 2009, Wednesday***

9:30 AM - Ambassador Trevor Clarke, Chairman, the Committee on Development and Intellectual Property

12:00 PM - Mr. Mohamed Omar Gad, the Permanent Mission of Egypt

2:30 PM - Mr. Lee-Makiyama, the Permanent Mission of Sweden (speaking for EU)

4:30 PM - Ms. Thais Mesquita, the Permanent Mission of Brazil

6:30 PM - Mr. Sisule Musungu, President, IQ Sensato

***16 July 2009, Thursday***

9:00 AM - Dr. Carolyn Deere, Global Economic Governance Programme, University of Oxford.

10:00 AM - Mrs. Deborah Lashley-Johnson, the Permanent Mission of the United States of America

11:30 AM - Ambassador Alberto J. Dumont, the Permanent Mission of Argentina.

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