



**OFFICE OF THE HIGH COMMISSIONER FOR
HUMAN RIGHTS**



Intellectual property and human rights

Sub-Commission on Human Rights resolution 2001/21

The Sub-Commission on the Promotion and Protection of Human Rights,

Guided by the Vienna Declaration and Programme of Action, in which the World Conference on Human Rights confirmed that the promotion and protection of human rights, in conformity with the Charter of the United Nations, is the first responsibility of Governments,

Reaffirming that, as declared in article 28 of the Universal Declaration of Human Rights, everyone is entitled to a social and international order in which the rights and freedoms set forth in the Universal Declaration can be fully realized,

Reaffirming also that, as stated in the provisions of the International Covenant on Economic, Social and Cultural Rights, the rights to self-determination, food, housing, work, health and education constitute legally binding obligations upon State parties,

Stressing that, in accordance with article 27, paragraph 2, of the Universal Declaration of Human Rights and article 15, paragraph 1 (c), of the International Covenant on Economic, Social and Cultural Rights, the right to protection of the moral and material interests resulting from any scientific, literary or artistic production of which one is the author is a human right, subject to limitations in the public interest,

Recalling its resolution 2000/7 of 17 August 2000,

Aware of the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and of its current review by the World Trade Organization Council for TRIPS and, in particular, of the recent special discussions in the Council on the provisions of the TRIPS Agreement related to public health issues and of the forthcoming Ministerial Conference of the World Trade Organization to be held in Doha in November 2001,

Aware also of the need to clarify the scope and meaning of several provisions of the TRIPS Agreement, in particular of articles 7 and 8 on the objectives and principles underlying the Agreement in order to ensure that States' obligations under the Agreement do not contradict their binding human rights obligations,

Noting with appreciation the day of general discussion held on 27 November 2000 by the Committee on Economic, Social and Cultural Rights on article 15, paragraph 1 (c), of the Covenant in order to clarify the relationship between intellectual property and human rights, and the current efforts of the Committee to draft and adopt a general comment on that subject,

Welcoming Commission on Human Rights resolution 2001/33 of 20 April 2001 on access to medication in the context of pandemics such as HIV/AIDS,

Noting the decision of the Commission on Human Rights in its resolution 2001/30 of 20 April 2001 to encourage the High Commissioner for Human Rights to strengthen the research and analytical capacities of her Office in the field of economic, social and cultural rights and to share her expertise, *inter alia* through the holding of expert meetings,

Reiterating that actual or potential conflict exists between the implementation of the TRIPS Agreement and the realization of economic, social and cultural rights, in particular the rights to self-determination, food, housing, work, health and education, and in relation to transfers of technology to developing countries,

Stressing the need for adequate protection of the traditional knowledge and cultural values of indigenous peoples and, in particular, for adequate protection against “bio-piracy” and the reduction of indigenous communities’ control over their own genetic and natural resources and cultural values,

Emphasizing its concern for the protection of the heritage of indigenous peoples and the work of its Special Rapporteur, Ms. Erica-Irene Daes, on this issue, in particular the revised draft principles and guidelines for the protection of the heritage of indigenous peoples (E/CN.4/Sub.2/2000/26, annex I),

Emphasizing also the provisions of the Convention on Biological Diversity relating to *inter alia*, the safeguarding of biological diversity and indigenous knowledge relating to biological diversity, and the promotion of the transfer of environmentally sustainable technologies,

1. *Welcomes* the progress report submitted by Mr. J. Oloka-Onyango and Ms. D. Udagama on globalization and its impact on the full enjoyment of human rights (E/CN.4/Sub.2/2001/10) and, in particular, their remarks concerning globalization and the question of intellectual property rights;
2. *Also welcomes* the report of the High Commissioner on the impact of the TRIPS Agreement on human rights (E/CN.4/Sub.2/2001/13);
3. *Reminds* all Governments of the primacy of human rights obligations under international law over economic policies and agreements, and requests them, in national, regional and international economic policy forums, to take international human rights obligations and principles fully into account in international economic policy formulation;
4. *Calls upon* Governments to integrate into their national and local legislation and policies provisions that, in accordance with international human rights obligations and principles, protect the social function of intellectual property;
5. *Urges* all Governments to ensure that the implementation of the TRIPS Agreement does not negatively impact on the enjoyment of human rights as provided for in international human rights instruments by which they are bound;
6. *Also urges* all Governments to take fully into account existing State obligations under international human rights instruments in the formulation of proposals for the ongoing review of the TRIPS Agreement, in particular in the context of the Ministerial Conference of the World Trade Organization to be held in Doha in November 2001;

7. *Calls upon* States parties to the International Covenant on Economic, Social and Cultural Rights to fulfil the duty under article 2, paragraph 1, article 11, paragraph 2, and article 15, paragraph 4, to cooperate internationally in order to realize the legal obligations under the Covenant, including in the context of international intellectual property regimes;

8. *Suggests* that the Committee on Economic, Social and Cultural Rights and other bodies monitoring the implementation of treaty obligations in the area of economic, social and cultural rights explore, in the course of reviewing States parties' reports, the implications of the TRIPS Agreement for the realization of economic, social and cultural rights;

9. *Requests* the United Nations High Commissioner for Human Rights to seek observer status with the World Trade Organization for the ongoing review of the TRIPS Agreement;

10. *Also requests* the High Commissioner for Human Rights to consider the need for an examination and, if necessary, to conduct such an investigation, into whether the patent, as a legal instrument, is compatible with the promotion and protection of human rights and corresponding State obligations;

11. *Further requests* the High Commissioner to undertake an analysis of the impact of the TRIPS Agreement on the rights of indigenous peoples;

12. *Encourages* the Special Rapporteurs on the right to food, education and adequate housing as a component of the right to an adequate standard of living to include in their reports a review of the implication of the TRIPS Agreement for the realization of the rights falling within their mandates;

13. *Calls upon* the High Commissioner to convene an expert seminar to consider the human rights dimension of the TRIPS Agreement based *inter alia*, on the reports of the High Commissioner on the impact of the TRIPS Agreement on human rights (E/CN.4/Sub.2/2001/13) and to report thereon to the Commission on Human Rights at its fifty-ninth session;

14. *Decides* to continue consideration of this question at its fifty-fourth session under the same agenda item.

*26th meeting
16 August 2001*

[Adopted without a vote.]