

# IP & human rights arguments

- Developing countries have invoked economic, social and cultural rights in the WTO (e.g , Group of 33 (“Friends of Special Products” in agriculture) WIPO and the UN Human Rights Council.
- Focus on economic, social and cultural rights and the right to development (not civil and political rights)

# The Commission on Human Rights Resolution 2001/33. Access to medication in the context of pandemics such as HIV/AIDS

- 3 (b) To adopt legislation or other measures, in accordance with applicable international law, including international agreements acceded to, to safeguard access to such preventive, curative or palliative pharmaceuticals or medical technologies from any limitations by third parties;
- 4 (b) To ensure that their actions as members of international organizations take due account of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and that the application of international agreements is supportive of public health policies which promote broad access to safe, effective and affordable preventive, curative or palliative pharmaceuticals and medical technologies;
- [Adopted by a roll-call vote of 52 votes to none with 1 abstention].

# The impact of the Agreement on Trade-Related Aspects of Intellectual Property Rights on human rights. Report of the High Commissioner

- strict interpretation of patentability requirements
- elaboration of competition laws that prevent abuses of IPRs
- Implement in national legislation safeguards [CLs, parallel imports] to protect access to essential drugs
- be cautious about enacting “TRIPS plus”
- E/CN.4/Sub.2/2001/13. 27 June 2001, p. 19-20.

# Doha Declaration on TRIPS and Public Health (2001)

- ‘...right to protect public health and, in particular, to promote access to medicines for all’.

*Human Rights and Intellectual Property: Statement  
by the Committee on Economic Social and Cultural  
Rights, UN Doc. E/C.12/2001/15, 14 December  
2001*

- The Committee considers of fundamental importance the integration of international human rights norms into the enactment and interpretation of intellectual property law... An explicit commitment to do so and the establishment of a mechanism for a human rights review of intellectual property systems are important steps towards that goal.

- **Human rights & TRIPS-plus provisions**

# UN Special Rapporteur on the Right to Health, Paul Hunt, in relation to the US-Peru FTA

- “in accordance with its human rights responsibility of international cooperation, the United States should not apply pressure on Peru to enter into commitments that either are inconsistent with Peru’s constitutional and international human rights obligations, or by their nature are WTO-plus
- CHR, Report submitted by the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health, Mission to Peru, E/C.4/2005/51/Add.3, 4 February 2005.

# Peru-Impact assessment

- Ministry of Health, *Evaluación de los potenciales efectos sobre acceso a medicamentos del Tratado de Libre Comercio que se negocia con Estados Unidos de América, April 2005.*
- [effect of proposed FTA rules on the cost of medicines in Peru: an extra 700 to 900 thousand people would be excluded from treatment].
- *Indecopi, Incidencia de los derechos de propiedad intelectual en el gasto de las familias en el marco del TLC, May 2005.*



# Human Rights Impact Assessment (HRIAs)

## --Defensoría de los Habitantes de la República

Impact of the Central American Free Trade Agreement (CAFTA) on the right to health of people in Costa Rica (2005)

## --Thai National Human Rights Commission

*Ex ante* assessment of the Thai-US FTA (2006)

# Canada-Colombia FTA (2008)

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- Each government will produce an annual report on human rights impacts of the trade deal.

# Canada's first Report, May 15, 2012



Foreign Affairs and  
International Trade Canada

Affaires étrangères et  
Commerce international Canada

***Annual Report Pursuant to the Agreement concerning Annual  
Reports on Human Rights and Free Trade between Canada and the  
Republic of Colombia***

## National Human Rights Commission of S. Korea special report on information human rights, March 27, 2013

- **Introduction of comprehensive and open-ended fair use provisions in the Copyright Act;**
- **Legislation of users' right capable of offsetting abusive enforcement of copyright;**
- **Guaranteeing the reuse and access of the general public to publicly-funded information and culture;**
- **Balanced harmony of intellectual property and the right to culture and information;**

# Examples of other HRIAs

- **Trade Policies and Hunger: The Impact of Trade Liberalisation on the right to food of farming communities in Ghana, Honduras and Indonesia (2007)** Ecumenical Advocacy Alliance
- **Right to Food of Milk and Honey Farmers, Zambia (2008)**. International, FoodFirst Information and Action Network
- **The Right to Food of Milk and Maize Farmers in Uganda (2009)**. International, FoodFirst Information and Action Network

HRIA on the impact of UPOV (Berne Declaration, QUNO, TWN, Church Development Service, Misereor etc.)

- **Does the current PVP law complement or strengthen the human right to food?**
- **Is the current PVP legislation likely to affect the capacity of the government to meet its obligations?**
- **Is implementation of UPOV '91 likely to breach the right to food of (a particular group of) people within the country?**
- **Is policy relating to adoption or implementation of UPOV '91 adopted with the right to food, particularly of vulnerable sections of the population, in mind?**

# India: Roche v. Cipla

- "Undoubtedly, India entered into the TRIPS regime, and amended her laws to fulfill her international obligations, yet...the Court cannot be unmindful of the right of the general public to access life saving drugs which are available and for which such access would be denied if the injunction were granted. The degree of harm in such eventuality is absolute; the chances of improvement of life expectancy; even chances of recovery in some cases would be snuffed out altogether, if injunction were granted." (Justice Ravindra Bhat, 2008, para 85)

# Novartis v. Monteverde, 1-2-2011

No puede desconocerse que los países en vías de desarrollo imitan productos medicinales por procedimiento de ingeniería inversa para cubrir sus necesidades en materia de salud pública; tampoco que el derecho a la preservación de la salud -internacionalmente reconocido en Tratados de jerarquía constitucional (arts. 31 y 75 inciso 22 de la Constitución nacional)- está estrechamente unido al derecho a la vida sin el cual todas las restantes garantías carecerían de sentido (art. 42, primer párrafo de la Constitución nacional; art. 11 de la Declaración Americana de los Derechos del Hombre; art. 4.1 del Pacto de San José de Costa Rica; art. 12.1 del Pacto Internacional; art. 6.1. del Pacto Internacional de Derechos Civiles y Políticos; Fallos:



# Anti-Counterfeit Act, 2008, High Court of Kenya, 2009

- ‘In my view, the right to health, life and human dignity are inextricably bound. There can be no argument that without health, the right to life is in jeopardy... ‘ (para 56).

# Anti-Counterfeit Act, 2008, High Court of Kenya, 2009

- I find that Sections 2, 32 and 34 of the Anti Counterfeit Act threaten to violate the right to life of the petitioners as protected by Article 26 (1), the right to human dignity guaranteed under Article 28 and the right to the highest attainable standard of health guaranteed under Article 43 (1) (para.87)

## UN Special Rapporteurs' work

- **Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/HRC/11/12, 31 March 2009**
- **Report of the Special Rapporteur on the right to food A/64/170 (2009), Seed policies and the right to food: enhancing agrobiodiversity and encouraging innovation**

# Committee on Economic, Social and Cultural Rights

- **The Committee also recommends that the State party undertake an impact assessment to determine the possible consequences of its foreign trade policies and agreements on the enjoyment by the population of the State party's partner countries of their economic, social and cultural rights. For example, the imposition by the State party of strict intellectual property protection that goes beyond the standards agreed upon in the World Trade Organization can adversely affect access to medicines, thereby compromising the right to health.**
- **Concluding Observations on Switzerland's submission.E/C.12/CHE/CO/2-3, 2010, para. 24.**

# Committee on Economic, Social and Cultural Rights

- The Committee is of the view that the so-called “TRIPS-plus” provisions concerning accession to the International Convention for the Protection of New Varieties of Plants increase food production costs, seriously undermining the realization of the right to food.
- Concluding Observations on Switzerland’s submission.E/C.12/CHE/CO/2-3, 2010, para. 24.

# Conclusions

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- Modest progress in integrating human rights considerations into international and national law
- Important work of the Special Rapporteurs and **CESCR**
- Interesting examples of HRIAs, large room for further use
- Little impact in developed countries' behavior