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GENERAL COMMENT No. 17 (2005)

The right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author (article 15, paragraph 1 (c), of the Covenant)

I. INTRODUCTION AND BASIC PREMISES

1. The right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author is a human right, which derives from the inherent dignity and worth of all persons. This fact distinguishes article 15, paragraph 1 (c), and other human rights from most legal entitlements recognized in intellectual property systems. Human rights are fundamental, inalienable and universal entitlements belonging to individuals and, under certain circumstances, groups of individuals and communities. Human rights are fundamental as they are inherent to the human person as such, whereas intellectual property rights are first and foremost means by which States seek to provide incentives for inventiveness and creativity, encourage the dissemination of creative and innovative productions, as well as the development of cultural identities, and preserve the integrity of scientific, literary and artistic productions for the benefit of society as a whole.

2. In contrast to human rights, intellectual property rights are generally of a temporary nature, and can be revoked, licensed or assigned to someone else. While under most intellectual property systems, intellectual property rights, often with the exception of moral rights, may be allocated, limited in time and scope, traded, amended and even forfeited, human rights are timeless expressions of fundamental entitlements of the human person. Whereas the human right to benefit from the protection of the moral and material interests resulting from one's scientific, literary and artistic productions safeguards the personal link between authors and their creations and between peoples, communities, or other groups and their collective cultural heritage, as well as their basic material interests which are necessary to enable authors to enjoy an adequate standard of living, intellectual property regimes primarily protect business and corporate interests and investments. Moreover, the scope of protection of the moral and material interests of the author provided for by article 15, paragraph 1 (c), does not necessarily coincide with what is referred to as intellectual property rights under national legislation or international agreements.¹

3. It is therefore important not to equate intellectual property rights with the human right recognized in article 15, paragraph 1 (c). The human right to benefit from the protection of the moral and material interests of the author is recognized in a number of international instruments. In identical language, article 27, paragraph 2, of the Universal Declaration of Human Rights provides: "Everyone has 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." Similarly, this right is recognized in regional human rights instruments, such as article 13, paragraph 2, of the American Declaration of the Rights and Duties of Man of 1948, article 14, paragraph 1 (c), of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights of 1988 ("Protocol of San Salvador") and, albeit not explicitly, in article 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms of 1952 (European Convention on Human Rights).

4. The right to benefit from the protection of the moral and material interests resulting from one's scientific, literary and artistic productions seeks to encourage the active contribution of creators to the arts and sciences and to the progress of society as a whole. As such, it is intrinsically linked to the other rights recognized in article 15 of the Covenant, i.e. the right to

take part in cultural life (art. 15, para. 1 (a)), the right to enjoy the benefits of scientific progress and its applications (art. 15, para. 1 (b)), and the freedom indispensable for scientific research and creative activity (art. 15, para. 3). The relationship between these rights and article 15, paragraph 1 (c), is at the same time mutually reinforcing and reciprocally limitative. The limitations imposed on the right of authors to benefit from the protection of the moral and material interests resulting from their scientific, literary and artistic productions by virtue of these rights will partly be explored in this general comment, partly in separate general comments on article 15, paragraphs 1 (a) and (b) and 3, of the Covenant. As a material safeguard for the freedom of scientific research and creative activity, guaranteed under article 15, paragraph 3 and article 15, paragraph 1 (c), also has an economic dimension and is, therefore, closely linked to the rights to the opportunity to gain one's living by work which one freely chooses (art. 6, para. 1) and to adequate remuneration (art. 7 (a)), and to the human right to an adequate standard of living (art. 11, para. 1). Moreover, the realization of article 15, paragraph 1 (c), is dependent on the enjoyment of other human rights guaranteed in the International Bill of Human Rights and other international and regional instruments, such as the right to own property alone as well as in association with others,² the freedom of expression including the freedom to seek, receive and impart information and ideas of all kinds,³ the right to the full development of the human personality,⁴ and rights of cultural participation,⁵ including cultural rights of specific groups.⁶

5. With a view to assisting States parties' implementation of the Covenant and fulfilment of their reporting obligations, this general comment focuses on the normative content of article 15, paragraph 1 (c) (Part I), States parties' obligations (Part II), violations (Part III) and implementation at the national level (Part IV), while the obligations of actors other than States parties are addressed in Part V.

II. NORMATIVE CONTENT OF ARTICLE 15, PARAGRAPH 1 (c)

6. Article 15, paragraph 1, enumerates, in three paragraphs, three rights covering different aspects of cultural participation, including the right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author (art. 15, para. 1 (c)), without explicitly defining the content and scope of this right. Therefore, each of the elements of article 15, paragraph 1 (c), requires interpretation.

Elements of article 15, paragraph 1 (c)

“Author”

7. The Committee considers that only the “author”, namely the creator, whether man or woman, individual or group of individuals,⁷ of scientific, literary or artistic productions, such as, inter alia, writers and artists, can be the beneficiary of the protection of article 15, paragraph 1 (c). This follows from the words “everyone”, “he” and “author”, which indicate that the drafters of that article seemed to have believed authors of scientific, literary or artistic productions to be natural persons,⁸ without at that time realizing that they could also be groups of individuals. Under the existing international treaty protection regimes, legal entities are included among the holders of intellectual property rights. However, as noted above, their entitlements, because of their different nature, are not protected at the level of human rights.⁹

8. Although the wording of article 15, paragraph 1 (c), generally refers to the individual creator (“everyone”, “he”, “author”), the right to benefit from the protection of the moral and material interests resulting from one’s scientific, literary or artistic productions can, under certain circumstances, also be enjoyed by groups of individuals or by communities.¹⁰

“Any scientific, literary or artistic production”

9. The Committee considers that “any scientific, literary or artistic production”, within the meaning of article 15, paragraph 1 (c), refers to creations of the human mind, that is to “scientific productions”, such as scientific publications and innovations, including knowledge, innovations and practices of indigenous and local communities, and “literary and artistic productions”, such as, inter alia, poems, novels, paintings, sculptures, musical compositions, theatrical and cinematographic works, performances and oral traditions.

“Benefit from the protection”

10. The Committee considers that article 15, paragraph 1 (c), recognizes the right of authors to benefit from some kind of protection of the moral and material interests resulting from their scientific, literary or artistic productions, without specifying the modalities of such protection. In order not to render this provision devoid of any meaning, the protection afforded needs to be effective in securing for authors the moral and material interests resulting from their productions. However, the protection under article 15, paragraph 1 (c), need not necessarily reflect the level and means of protection found in present copyright, patent and other intellectual property regimes, as long as the protection available is suited to secure for authors the moral and material interests resulting from their productions, as defined in paragraphs 12 to 16 below.

11. The Committee observes that, by recognizing the right of everyone to “benefit from the protection” of the moral and material interests resulting from one’s scientific, literary or artistic productions, article 15, paragraph 1 (c), by no means prevents States parties from adopting higher protection standards in international treaties on the protection of the moral and material interests of authors or in their domestic laws,¹¹ provided that these standards do not unjustifiably limit the enjoyment by others of their rights under the Covenant.¹²

“Moral interests”

12. The protection of the “moral interests” of authors was one of the main concerns of the drafters of article 27, paragraph 2, of the Universal Declaration of Human Rights: “Authors of all artistic, literary, scientific works and inventors shall retain, in addition to just remuneration of their labour, a moral right on their work and/or discovery which shall not disappear, even after such a work shall have become the common property of mankind.”¹³ Their intention was to proclaim the intrinsically personal character of every creation of the human mind and the ensuing durable link between creators and their creations.

13. In line with the drafting history of article 27, paragraph 2, of the Universal Declaration of Human Rights and article 15, paragraph 1 (c), of the Covenant, the Committee considers that “moral interests” in article 15, paragraph 1 (c), include the right of authors to be recognized as

the creators of their scientific, literary and artistic productions and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, such productions, which would be prejudicial to their honour and reputation.¹⁴

14. The Committee stresses the importance of recognizing the value of scientific, literary and artistic productions as expressions of the personality of their creator, and notes that protection of moral interests can be found, although to a varying extent, in most States, regardless of the legal system in force.

“Material interests”

15. The protection of “material interests” of authors in article 15, paragraph 1 (c), reflects the close linkage of this provision with the right to own property, as recognized in article 17 of the Universal Declaration of Human Rights and in regional human rights instruments, as well as with the right of any worker to adequate remuneration (art. 7 (a)). Unlike other human rights, the material interests of authors are not directly linked to the personality of the creator, but contribute to the enjoyment of the right to an adequate standard of living (art. 11, para. 1).

16. The term of protection of material interests under article 15, paragraph 1 (c), need not extend over the entire lifespan of an author. Rather, the purpose of enabling authors to enjoy an adequate standard of living can also be achieved through one-time payments or by vesting an author, for a limited period of time, with the exclusive right to exploit his scientific, literary or artistic production.

“Resulting”

17. The word “resulting” stresses that authors only benefit from the protection of such moral and material interests which are directly generated by their scientific, literary or artistic productions.

Conditions for States parties’ compliance with article 15, paragraph 1 (c)

18. The right to the protection of the moral and material interests of authors contains the following essential and interrelated elements, the precise application of which will depend on the economic, social and cultural conditions prevailing in a particular State party:

(a) *Availability*. Adequate legislation and regulations, as well as effective administrative, judicial or other appropriate remedies, for the protection of the moral and material interests of authors must be available within the jurisdiction of the States parties;

(b) *Accessibility*. Administrative, judicial or other appropriate remedies for the protection of the moral and material interests resulting from scientific, literary or artistic productions must be accessible to all authors. Accessibility has four overlapping dimensions:

(i) *Physical accessibility*: national courts and agencies responsible for the protection of the moral and material interests resulting from the scientific, literary or artistic productions of authors must be at the disposal of all segments of society, including authors with disabilities;

- (ii) Economic accessibility (affordability): access to such remedies must be affordable for all, including disadvantaged and marginalized groups. For example, where a State party decides to meet the requirements of article 15, paragraph 1 (c), through traditional forms of intellectual property protection, related administrative and legal costs must be based on the principle of equity, ensuring that these remedies are affordable for all;
- (iii) Accessibility of information: accessibility includes the right to seek, receive and impart information on the structure and functioning of the legal or policy regime to protect the moral and material interests of authors resulting from their scientific, literary and artistic productions, including information on relevant legislation and procedures. Such information should be understandable to everyone and should be published also in the languages of linguistic minorities and indigenous peoples;

(c) *Quality of protection.* Procedures for the protection of the moral and material interests of authors should be administered competently and expeditiously by judges and other relevant authorities.

Special topics of broad application

Non-discrimination and equal treatment

19. Article 2, paragraph 2, and article 3 of the Covenant prohibit any discrimination in the access to an effective protection of the moral and material interests of authors, including administrative, judicial and other remedies, on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right as recognized in article 15, paragraph 1 (c).¹⁵

20. The Committee stresses that the elimination of discrimination to ensure equal access to an effective protection of the moral and material interests of authors can often be achieved with limited resources through the adoption or amendment or abrogation of legislation or through the dissemination of information. The Committee recalls general comment No. 3 (1990) on the nature of States parties' obligations, paragraph 12, which states that even in times of severe resource constraints, the disadvantaged and marginalized individuals and groups of society must be protected by the adoption of relatively low-cost targeted programmes.

21. The adoption of temporary special measures taken for the sole purpose of securing de facto equality for disadvantaged or marginalized individuals or groups, as well as those subjected to discrimination is not a violation of the right to benefit from the protection of the moral and material interests of the author, provided that such measures do not perpetuate unequal or separate protection standards for different individuals or groups and are discontinued once the objectives for which they were adopted are achieved.

Limitations

22. The right to the protection of the moral and material interests resulting from one's scientific, literary and artistic productions is subject to limitations and must be balanced with the other rights recognized in the Covenant.¹⁶ However, limitations on the rights protected under article 15, paragraph 1 (c), must be determined by law in a manner compatible with the nature of these rights, must pursue a legitimate aim, and must be strictly necessary for the promotion of the general welfare in a democratic society, in accordance with article 4 of the Covenant.

23. Limitations must therefore be proportionate, meaning that the least restrictive measures must be adopted when several types of limitations may be imposed. Limitations must be compatible with the very nature of the rights protected in article 15, paragraph 1 (c), which lies in the protection of the personal link between the author and his/her creation and of the means which are necessary to enable authors to enjoy an adequate standard of living.

24. The imposition of limitations may, under certain circumstances, require compensatory measures, such as payment of adequate compensation¹⁷ for the use of scientific, literary or artistic productions in the public interest.

III. STATES PARTIES' OBLIGATIONS

General legal obligations

25. While the Covenant provides for progressive realization and acknowledges constraints based on limits of available resources (art. 2, para. 1), it also imposes on States parties various obligations that are of an immediate effect, including core obligations. Steps taken to fulfil obligations must be deliberate, concrete and targeted towards the full realization of the right of everyone to benefit from the protection of the moral and material benefits resulting from any scientific, literary or artistic production of which he or she is the author.¹⁸

26. The progressive realization of that right over a period of time means that States parties have a specific and continuing obligation to move as expeditiously and effectively as possible towards the full realization of article 15, paragraph 1 (c).¹⁹

27. As in the case of all other rights contained in the Covenant, there is a strong presumption that retrogressive measures taken in relation to the right to the protection of the moral and material interests of authors are not permissible. If any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after careful consideration of all alternatives and that they are duly justified in the light of the totality of the rights recognized in the Covenant.²⁰

28. The right of everyone to benefit from the protection of the moral and material benefits resulting from any scientific, literary or artistic production of which he or she is the author, like all human rights, imposes three types or levels of obligations on States parties: the obligations to *respect*, *protect* and *fulfil*. The obligation to *respect* requires States parties to refrain from interfering directly or indirectly with the enjoyment of the right to benefit from the protection of the moral and material interests of the author. The obligation to *protect* requires States parties to

take measures that prevent third parties from interfering with the moral and material interests of authors. Finally, the obligation to *fulfil* requires States parties to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realization of article 15, paragraph 1 (c).²¹

29. The full realization of article 15, paragraph 1 (c), requires measures necessary for the conservation, development and diffusion of science and culture. This follows from article 15, paragraph 2, of the Covenant, which defines obligations that apply to each aspect of the rights recognized in article 15, paragraph 1, including the right of authors to benefit from the protection of their moral and material interests.

Specific legal obligations

30. States parties are under an obligation to *respect* the human right to benefit from the protection of the moral and material interests of authors by, inter alia, abstaining from infringing the right of authors to be recognized as the creators of their scientific, literary or artistic productions and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, their productions that would be prejudicial to their honour or reputation. States parties must abstain from unjustifiably interfering with the material interests of authors, which are necessary to enable those authors to enjoy an adequate standard of living.

31. Obligations to *protect* include the duty of States parties to ensure the effective protection of the moral and material interests of authors against infringement by third parties. In particular, States parties must prevent third parties from infringing the right of authors to claim authorship of their scientific, literary or artistic productions, and from distorting, mutilating or otherwise modifying, or taking any derogatory action in relation to such productions in a manner that would be prejudicial to the author's honour or reputation. Similarly, States parties are obliged to prevent third parties from infringing the material interests of authors resulting from their productions. To that effect, States parties must prevent the unauthorized use of scientific, literary and artistic productions that are easily accessible or reproducible through modern communication and reproduction technologies, e.g. by establishing systems of collective administration of authors' rights or by adopting legislation requiring users to inform authors of any use made of their productions and to remunerate them adequately. States parties must ensure that third parties adequately compensate authors for any unreasonable prejudice suffered as a consequence of the unauthorized use of their productions.

32. With regard to the right to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of indigenous peoples, States parties should adopt measures to ensure the effective protection of the interests of indigenous peoples relating to their productions, which are often expressions of their cultural heritage and traditional knowledge. In adopting measures to protect scientific, literary and artistic productions of indigenous peoples, States parties should take into account their preferences. Such protection might include the adoption of measures to recognize, register and protect the individual or collective authorship of indigenous peoples under national intellectual property rights regimes and should prevent the unauthorized use of scientific, literary and artistic productions of indigenous peoples by third parties. In implementing these protection measures, States parties should respect the principle of free, prior and informed consent of the indigenous authors

concerned and the oral or other customary forms of transmission of scientific, literary or artistic production; where appropriate, they should provide for the collective administration by indigenous peoples of the benefits derived from their productions.

33. States parties in which ethnic, religious or linguistic minorities exist are under an obligation to protect the moral and material interests of authors belonging to these minorities through special measures to preserve the distinctive character of minority cultures.²²

34. The obligation to *fulfil* (provide) requires States parties to provide administrative, judicial or other appropriate remedies in order to enable authors to claim the moral and material interests resulting from their scientific, literary or artistic productions and to seek and obtain effective redress in cases of violation of these interests.²³ States parties are also required to *fulfil* (facilitate) the right in article 15, paragraph 1 (c), e.g. by taking financial and other positive measures which facilitate the formation of professional and other associations representing the moral and material interests of authors, including disadvantaged and marginalized authors, in line with article 8, paragraph 1 (a), of the Covenant.²⁴ The obligation to *fulfil* (promote) requires States parties to ensure the right of authors of scientific, literary and artistic productions to take part in the conduct of public affairs and in any significant decision-making processes that have an impact on their rights and legitimate interests, and to consult these individuals or groups or their elected representatives prior to the adoption of any significant decisions affecting their rights under article 15, paragraph 1 (c).²⁵

Related obligations

35. The right of authors to benefit from the protection of the moral and material interests resulting from their scientific, literary and artistic productions cannot be isolated from the other rights recognized in the Covenant. States parties are therefore obliged to strike an adequate balance between their obligations under article 15, paragraph 1 (c), on one hand, and under the other provisions of the Covenant, on the other hand, with a view to promoting and protecting the full range of rights guaranteed in the Covenant. In striking this balance, the private interests of authors should not be unduly favoured and the public interest in enjoying broad access to their productions should be given due consideration.²⁶ States parties should therefore ensure that their legal or other regimes for the protection of the moral and material interests resulting from one's scientific, literary or artistic productions constitute no impediment to their ability to comply with their core obligations in relation to the rights to food, health and education, as well as to take part in cultural life and to enjoy the benefits of scientific progress and its applications, or any other right enshrined in the Covenant.²⁷ Ultimately, intellectual property is a social product and has a social function.²⁸ States parties thus have a duty to prevent unreasonably high costs for access to essential medicines, plant seeds or other means of food production, or for schoolbooks and learning materials, from undermining the rights of large segments of the population to health, food and education. Moreover, States parties should prevent the use of scientific and technical progress for purposes contrary to human rights and dignity, including the rights to life, health and privacy, e.g. by excluding inventions from patentability whenever their commercialization would jeopardize the full realization of these rights.²⁹ States parties should, in particular, consider to what extent the patenting of the human body and its parts would affect their obligations under the Covenant or under other relevant international human rights instruments.³⁰

States parties should also consider undertaking human rights impact assessments prior to the adoption and after a period of implementation of legislation for the protection of the moral and material interests resulting from one's scientific, literary or artistic productions.

International obligations

36. In its general comment No. 3 (1990), the Committee drew attention to the obligation of all States parties to take steps, individually and through international assistance and cooperation, especially economic and technical, towards the full realization of the rights recognized in the Covenant. In the spirit of Article 56 of the Charter of the United Nations, as well as the specific provisions of the Covenant (arts. 2, para. 1, 15, para. 44 and 23), States parties should recognize the essential role of international cooperation for the achievement of the rights recognized in the Covenant, including the right to benefit from the protection of the moral and material interests resulting from one's scientific, literary and artistic productions, and should comply with their commitment to take joint and separate action to that effect. International cultural and scientific cooperation should be carried out in the common interest of all peoples.

37. The Committee recalls that, in accordance with Articles 55 and 56 of the Charter of the United Nations, well-established principles of international law, and the provisions of the Covenant itself, international cooperation for development and thus for the realization of economic, social and cultural rights is an obligation of all States parties and, in particular, of States which are in a position to assist.³¹

38. Bearing in mind the different levels of development of States parties, it is essential that any system for the protection of the moral and material interests resulting from one's scientific, literary and artistic productions facilitates and promotes development cooperation, technology transfer, and scientific and cultural cooperation,³² while at the same time taking due account of the need to preserve biological diversity.³³

Core obligations

39. In general comment No. 3 (1990), the Committee confirmed that States parties have a core obligation to ensure the satisfaction of minimum essential levels of each of the rights enunciated in the Covenant. In conformity with other human rights instruments, as well as international agreements on the protection of the moral and material interests resulting from one's scientific, literary or artistic productions, the Committee considers that article 15, paragraph 1 (c), of the Covenant entails at least the following core obligations, which are of immediate effect:

(a) To take legislative and other necessary steps to ensure the effective protection of the moral and material interests of authors;

(b) To protect the rights of authors to be recognized as the creators of their scientific, literary and artistic productions and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, their productions that would be prejudicial to their honour or reputation;

(c) To respect and protect the basic material interests of authors resulting from their scientific, literary or artistic productions, which are necessary to enable those authors to enjoy an adequate standard of living;

(d) To ensure equal access, particularly for authors belonging to disadvantaged and marginalized groups, to administrative, judicial or other appropriate remedies enabling authors to seek and obtain redress in case their moral and material interests have been infringed;

(e) To strike an adequate balance between the effective protection of the moral and material interests of authors and States parties' obligations in relation to the rights to food, health and education, as well as the rights to take part in cultural life and to enjoy the benefits of scientific progress and its applications, or any other right recognized in the Covenant.

40. The Committee wishes to emphasize that it is particularly incumbent on States parties and other actors in a position to assist, to provide "international assistance and cooperation, especially economic and technical", which enable developing countries to fulfil their obligations indicated in paragraph 36 above.

IV. VIOLATIONS

41. In determining which actions or omissions by States parties amount to a violation of the right to the protection of the moral and material interests of authors, it is important to distinguish the inability from the unwillingness of a State party to comply with its obligations under article 15, paragraph 1 (c). This follows from article 2, paragraph 1, of the Covenant, which obliges each State party to take the necessary steps to the maximum of its available resources. A State which is unwilling to use the maximum of its available resources for the realization of the right of authors to benefit from the protection of the moral and material interests resulting from their scientific, literary and artistic productions is in violation of its obligations under article 15, paragraph 1 (c). If resource constraints render it impossible for a State to comply fully with its obligations under the Covenant, it has the burden of justifying that every effort has been made to use all available resources at its disposal to satisfy, as a matter of priority, the core obligations outlined above.

42. Violations of the right to benefit from the protection of the moral and material interests of authors can occur through the direct action of States parties or of other entities insufficiently regulated by States parties. The adoption of any retrogressive measures incompatible with the core obligations under article 15, paragraph 1 (c), outlined in paragraph 39 above, constitutes a violation of that right. Violations through acts of commission include the formal repeal or unjustifiable suspension of legislation protecting the moral and material interests resulting from one's scientific, literary and artistic productions.

43. Violations of article 15, paragraph 1 (c), can also occur through the omission or failure of States parties to take necessary measures to comply with its legal obligations under that provision. Violations through omission include the failure to take appropriate steps towards the full realization of the right of authors to benefit from the protection of the moral and material interests resulting from their scientific, literary or artistic productions and the failure to enforce relevant laws or to provide administrative, judicial or other appropriate remedies enabling authors to assert their rights under article 15, paragraph 1 (c).

Violations of the obligation to respect

44. Violations of the obligation to *respect* include State actions, policies or laws which have the effect of infringing the right of authors to be recognized as the creators of their scientific, literary and artistic productions and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, their productions that would be prejudicial to their honour or reputation; unjustifiably interfering with the material interests of authors, which are necessary to enable those authors to enjoy an adequate standard of living; denying authors access to administrative, judicial or other appropriate remedies to seek redress in case their moral and material interests have been violated; and discriminating against individual authors in relation to the protection of their moral and material interests.

Violations of the obligation to protect

45. Violations of the obligation to *protect* follow from the failure of a State to take all necessary measures to safeguard authors within their jurisdiction from infringements of their moral and material interests by third parties. This category includes such omissions as the failure to enact and/or enforce legislation prohibiting any use of scientific, literary or artistic productions that is incompatible with the right of authors to be recognized as the creator of their productions or that distorts, mutilates or otherwise modifies, or is derogatory towards, such productions in a manner that would be prejudicial to their honour or reputation or that unjustifiably interferes with those material interests that are necessary to enable authors to enjoy an adequate standard of living; and the failure to ensure that third parties adequately compensate authors, including indigenous authors, for any unreasonable prejudice suffered as a consequence of the unauthorized use of their scientific, literary and artistic productions.

Violations of the obligation to fulfil

46. Violations of the obligation to *fulfil* occur when States parties fail to take all necessary steps within their available resources to promote the realization of the right to benefit from the protection of the moral and material interests resulting from one's scientific, literary or artistic productions. Examples include the failure to provide administrative, judicial or other appropriate remedies enabling authors, especially those belonging to disadvantaged and marginalized groups, to seek and obtain redress in case their moral and material interests have been infringed, or the failure to provide adequate opportunities for the active and informed participation of authors and groups of authors in any decision-making process that has an impact on their right to benefit from the protection of the moral and material interests resulting from their scientific, literary or artistic productions.

V. IMPLEMENTATION AT THE NATIONAL LEVEL

National legislation

47. The most appropriate measures to implement the right to the protection of the moral and material interests of the author will vary significantly from one State to another. Every State has a considerable margin of discretion in assessing which measures are most suitable to meet its specific needs and circumstances. The Covenant, however, clearly imposes a duty on each State

to take whatever steps are necessary to ensure that everyone has equal access to effective mechanisms for the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author.

48. National laws and regulations for the protection of the moral and material interests of the author should be based on the principles of accountability, transparency and independence of the judiciary, since these principles are essential to the effective implementation of all human rights, including article 15, paragraph 1 (c). In order to create a favourable climate for the realization of that right, States parties should take appropriate steps to ensure that the private business sector and civil society are aware of, and consider the effects on the enjoyment of other human rights of the right to benefit from the protection of the moral and material interests resulting from one's scientific, literary and artistic productions. In monitoring progress towards the realization of article 15, paragraph 1 (c), States parties should identify the factors and difficulties affecting implementation of their obligations.

Indicators and benchmarks

49. States parties should identify appropriate indicators and benchmarks designed to monitor, at the national and international levels, States parties' obligations under article 15, paragraph 1 (c). States parties may obtain guidance on appropriate indicators, which should address different aspects of the right to the protection of the moral and material interests of the author, from the World Intellectual Property Organization (WIPO), the United Nations Educational, Scientific and Cultural Organization (UNESCO) and other specialized agencies and programmes within the United Nations system that are concerned with the protection of scientific, literary and artistic productions. Such indicators must be disaggregated on the basis of the prohibited grounds of discrimination, and cover a specified time frame.

50. Having identified appropriate indicators in relation to article 15, paragraph 1 (c), States parties are invited to set appropriate national benchmarks in relation to each indicator. During the periodic reporting procedure, the Committee will engage in a process of scoping with the State party. Scoping involves the joint consideration by the State party and the Committee of the indicators and national benchmarks, which will then provide the targets to be achieved by the State party during the next reporting cycle. During that period, the State party will use these national benchmarks to monitor its implementation of article 15, paragraph 1 (c). Thereafter, in the subsequent reporting process, the State party and the Committee will consider whether or not the benchmarks have been achieved, and any difficulties that may have been encountered.

Remedies and accountability

51. The human right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author should be adjudicated by competent judicial and administrative bodies. Indeed, effective protection of the moral and material interests of authors resulting from their scientific, literary and artistic productions would be hardly conceivable without the possibility of availing oneself of administrative, judicial or other appropriate remedies.³⁴

52. All authors who are victims of a violation of the protected moral and material interests resulting from their scientific, literary or artistic productions should, consequently, have access to effective administrative, judicial or other appropriate remedies at the national level. Such remedies should not be unreasonably complicated or costly, or entail unreasonable time limits or unwarranted delays.³⁵ Parties to legal proceedings should have the right to have these proceedings reviewed by a judicial or other competent authority.³⁶

53. All victims of violations of the rights protected under article 15, paragraph 1 (c), should be entitled to adequate compensation or satisfaction.

54. National ombudsmen, human rights commissions, where they exist, and professional associations of authors or similar institutions should address violations of article 15, paragraph 1 (c).

VI. OBLIGATIONS OF ACTORS OTHER THAN STATES PARTIES

55. While only States parties to the Covenant are held accountable for compliance with its provisions, they are nevertheless urged to consider regulating the responsibility resting on the private business sector, private research institutions and other non-State actors to respect the rights recognized in article 15, paragraph 1 (c), of the Covenant.

56. The Committee notes that, as members of international organizations such as WIPO, UNESCO, the Food and Agriculture Organization of the United Nations (FAO), the World Health Organization (WHO), and the World Trade Organization (WTO), States parties have an obligation to take whatever measures they can to ensure that the policies and decisions of those organizations are in conformity with their obligations under the Covenant, in particular the obligations contained in articles 2, paragraph 1, 15, paragraph 4, 22 and 23 concerning international assistance and cooperation.³⁷

57. United Nations organs, as well as specialized agencies, should, within their fields of competence and in accordance with articles 22 and 23 of the Covenant, take international measures likely to contribute to the effective implementation of article 15, paragraph 1 (c). In particular, WIPO, UNESCO, FAO, WHO and other relevant agencies, organs and mechanisms of the United Nations are called upon to intensify their efforts to take into account human rights principles and obligations in their work concerning the protection of the moral and material benefits resulting from one's scientific, literary and artistic productions, in cooperation with the Office of the High Commissioner for Human Rights.

Notes

¹ Relevant international instruments include, inter alia, the Paris Convention for the Protection of Industrial Property, as last revised in 1967; the Berne Convention for the Protection of Literary and Artistic Works, as last revised in 1979; the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention); the WIPO Copyright Treaty; the WIPO Performances and Phonograms Treaty (which, inter alia, provides international protection for performers of "expressions of folklore"),

the Convention on Biological Diversity; the Universal Copyright Convention, as last revised in 1971; and the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS Agreement) of WTO.

² See article 17 of the Universal Declaration of Human Rights; article 5 (d) (v) of the International Convention on the Elimination of All Forms of Racial Discrimination; article 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights); article 21 of the American Convention on Human Rights; and article 4 of the African Charter on Human and Peoples' Rights (Banjul Charter).

³ See article 19 of the Universal Declaration of Human Rights; article 19, paragraph 2, of the International Covenant on Civil and Political Rights; article 5 of the European Convention on Human Rights; article 13 of the American Declaration on Human Rights and article 9 of the African Charter on Human and Peoples' Rights.

⁴ See article 26, paragraph 2, of the Universal Declaration of Human Rights. See also article 13, paragraph 1, of the Covenant.

⁵ See article 5 (e) (vi) of the Convention on the Elimination of All Forms of Racial Discrimination; article 14 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) and article 17, paragraph 2, of the African Charter on Human and Peoples' Rights.

⁶ See article 27 of the International Covenant on Civil and Political Rights; article 13 (c) of the Convention on the Elimination of all Forms of Discrimination against Women; article 31 of the Convention on the Rights of the Child and article 31 of the International Convention on the Rights of All Migrant Workers and Members of their Families.

⁷ See also paragraph 32 below.

⁸ See Maria Green, International Anti-Poverty Law Centre, "Drafting history of article 15 (1) (c) of the International Covenant on Economic, Social and Cultural Rights", E/C.12/2000/15, paragraph 45.

⁹ Committee on Economic, Social and Cultural Rights, twenty-seventh session (2001), "Human Rights and Intellectual Property", Statement by the Committee on Economic, Social and Cultural Rights, 29 November 2001, E/C.12/2001/15, at paragraph 6.

¹⁰ See also paragraph 32 below.

¹¹ See article 5, paragraph 2 of the Covenant.

¹² See below, at paragraphs 22, 23 and 35. See also articles 4 and 5 of the Covenant.

¹³ Commission on Human Rights, second session, Report of the Working Group on the Declaration on Human Rights, E/CN.4/57, 10 December 1947, page 15.

¹⁴ See article 6 bis of the Berne Convention for the Protection of Literary and Artistic Works.

¹⁵ This prohibition, to some extent, duplicates the national treatment provisions contained in international conventions for the protection of intellectual property, the main difference being that articles 2, paragraph 2 and 3 of the Covenant apply not only to foreigners but also to a State party's own nationals (see articles 6 to 15 of the Covenant: "everyone"). See also Committee on Economic, Social and Cultural Rights, thirty-fourth session, general comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights, 13 May 2005.

¹⁶ See paragraph 35 below. The need to strike an adequate balance between article 15, paragraph 1 (c), and other rights under the Covenant applies, in particular, to the rights to take part in cultural life (art. 15, para. 1 (a)) and to enjoy the benefits of scientific progress and its applications (art. 15, para. 1 (b)), as well as the rights to food (art. 11), health (art. 12) and education (art. 13).

¹⁷ See article 17, paragraph 2, of the Universal Declaration of Human Rights; article 21, paragraph 2, of the American Convention on Human Rights and article 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms.

¹⁸ See general comment No. 3 (1990), at paragraph 9; general comment No. 13 (1999) on the right to education, at paragraph 43 and general comment No. 14 (2000) on the right to the highest attainable standard of health, at paragraph 30. See also the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (Limburg Principles), at paragraphs 16 and 22, Maastricht, 2-6 June 1986.

¹⁹ See general comment No. 3 (1990), paragraph 9; general comment No. 13 (1999), paragraph 44; general comment No. 14 (2000), paragraph 31. See also Limburg Principles, paragraph 21.

²⁰ See general comment No. 3 (1990), at paragraph 9; general comment No. 13 (1999), at paragraph 45 and general comment No. 14 (2000), at paragraph 32.

²¹ See general comment No. 13 (1999), at paragraphs 46 and 47, and general comment No. 14 (2000), at paragraph 33. See also Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (Maastricht Guidelines), paragraph 6, Maastricht, 22-26 January 1997.

²² See article 15, paragraph 1 (c), of the Covenant, read in conjunction with article 27 of the International Covenant on Civil and Political Rights. See also UNESCO, General Conference, nineteenth session, Recommendation on Participation by the People at Large in Cultural Life and Their Contribution to It, adopted on 26 November 1976, at paragraph I (2) (f).

- ²³ See Committee on Economic, Social and Cultural Rights, nineteenth session, general comment No. 9 (1998) on the domestic application of the Covenant, at paragraph 9. See also article 8 of the Universal Declaration of Human Rights and article 2, paragraph 3, of the International Covenant on Civil and Political Rights.
- ²⁴ See also article 22, paragraph 1, of the International Covenant on Civil and Political Rights.
- ²⁵ See Committee on Economic, Social and Cultural Rights, twenty-seventh session (2001), “Human Rights and Intellectual Property”, Statement by the Committee on Economic, Social and Cultural Rights, 29 November 2001, E/C.12/2001/15, at paragraph 9.
- ²⁶ *Ibid.*, at paragraph 17.
- ²⁷ *Ibid.*, at paragraph 12.
- ²⁸ *Ibid.*, at paragraph 4.
- ²⁹ Cf. article 27, paragraph 2, of the WTO TRIPS Agreement.
- ³⁰ See article 4 of the UNESCO Universal Declaration on the Human Genome and Human Rights, although this instrument is not as such legally binding.
- ³¹ Committee on Economic, Social and Cultural Rights, fifth session, general comment No. 3 (1990), at paragraph 14.
- ³² Committee on Economic, Social and Cultural Rights, twenty-seventh session, Human Rights and Intellectual Property, Statement by the Committee on Economic, Social and Cultural Rights, 29 November 2001, E/C.12/2001/15, at paragraph 15.
- ³³ See article 8 (j) of the Convention on Biological Diversity. See also Sub-Commission on the Promotion and Protection of Human Rights, 26th meeting, Resolution 2001/21, E/CN.4/Sub.2/Res/2001/21.
- ³⁴ Cf. Universal Declaration of Human Rights, article 8; general comment No. 9 (1998), at paragraphs 3 and 9; Limburg Principles, at paragraph 19; Maastricht Guidelines, at paragraph 22.
- ³⁵ See general comment No. 9 (1998), at paragraph 9 (with regard to administrative remedies). See further article 14 (1) of the International Covenant on Civil and Political Rights.
- ³⁶ See general comment No. 9, at paragraph 9.
- ³⁷ Cf. Committee on Economic, Social and Cultural Rights, eighteenth session, Globalization and Economic, Social and Cultural Rights, Statement by the Committee on Economic, Social and Cultural Rights, 11 May 1998, at paragraph 5.