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For the attention of Farida Shaheed
Independent Expert in the Field of Cultural Rights
United Nations
Office of the High Commissioner of Human Rights

Re. Right to Access the Benefits of Scientific Progress and its Applications

This submission is a response to the invitation of 18th October 2011 to answer a questionnaire on the right of everyone to access the benefits of scientific progress and its applications in Article 15 1(b) of the International Covenant on Economic, Social and Cultural Rights.

My interest in the matter arises from research which I am currently undertaking for a book 'Human Rights, Property Rights and Emerging Biotechnologies' to be published by Johns Hopkins University Press (2012). The book analyzes the conceptual tensions in Article 15 between the right to authorship and the right to benefit-sharing and explores its adaptation a quarter of a century later to the life-sciences in the wake of the rising globalization of bio-economies, increased reliance on finance from the private sector in the funding of basic science, the shifting legal boundaries of intellectual property rights, the growth and multiplication of local, regional and international ethical codes of practice and the polarization of moral and religious debates on emerging biotechnologies. The book builds on my previous work *The Law and Ethics of Medical Research: International Bioethics and Human Rights* (Routledge, 2005) and numerous articles published on the intersection between ethical and legal aspects of research in the biosciences and patent laws. I have engaged in extensive dialogue and collaboration with academics around the world, scientists, industry and regulators and I have contributed to the 2011 White Paper of the AAAS Science, Ethics and Human Rights Working Group.

Based on my work, there are two areas which require particular attention to facilitate realization of the right to access the benefits of science.

Accessing the Benefits of Science & Its Application: Increasing Transparency/Public Access to Patent data/

In the first instance, there is an urgent need for enhanced transparency and public dissemination of patent data. Dissemination of the technical details of a patented invention is a legal requirement (and the *qui-pro-quo* for the grant of exclusive rights over the invention). Yet, leading patent offices around the world have acknowledged serious deficiencies in the global patent information infrastructure in terms of the accuracy, timeliness and accessibility of patent data. See for instance, WIPO Symposium to Address Operational Deficiencies in Global IP Systems (Aug. 28, 2009):

http://www.wipo.int/pressroom/en/articles/2009/article_0031.html). Access to timely and accurate patent information is particularly critical in emerging fields of science, as there is

significant international variance in patenting standards amongst leading patent offices in the world (A. Plomer, 'Stem Cell Patents in a Global Economy: The Legal Challenges' *Stanford Journal of Law, Science and Policy* (2010)

http://www.stanford.edu/group/sjlsip/cgi-bin/users_images/pdfs/61_Plomer%20Final.pdf

Deficiencies in the patent information infrastructure and the difficulties of accessing details of the thousands of patent applications upstream the discovery chain make it difficult for scientists, industry, policy makers and funders to scrutinize and analyse patent data. It also frustrates the opportunity for third party observations on 'prior-art' to patent examiners at the pre-grant stage. For evidence of the potential benefits of expert input see Prof. Noveck's 'Peer-to-Patent Review Project' and AAAS 'Expert Labs.').

Furthermore, TRIPS has forced developing and developed countries alike to adopt minimum international IP standards. Yet, developing countries lack basic information infrastructures to identify, analyse and evaluate international patent data (Peter Drahos, *The Global Governance of Knowledge - Patent Offices and their Clients*, CUP, 2011). The need for public access to patent data is particularly critical in relation to pharmaceutical products as there is evidence to suggest that developing countries have granted patents earlier than required under TRIPS (Tahir Amin: http://www.wpro.who.int/publications/PUB_9789290223757.htm).

International cooperation between WIPO, the EPO and leading patent offices around the world is needed to enhance human and technological resources to support initiatives underway, such as the 2008 WHO patent project to "compile, maintain and update a user-friendly global database which contains public information on the administrative status of health-related patents, including supporting the existing efforts for determining the patent status of health products in order to strengthen national capacities for analysis of the information contained in those databases and improve the quality of patents."

Scientific Responsibilities, Safeguards and Remedies.

It is widely accepted that scientists have a duty to ensure respect for human dignity in research. Human dignity is a fundamental value and the foundation of fundamental rights in human rights instruments (Morsink). Since the adoption of the UN Declaration of Human Rights (1948), respect for human dignity has acquired particular significance and prominence in the UNESCO's Universal Declaration on the Human Genome and Human Rights (1997) and the UNESCO's Declaration on Bioethics and Human Rights (2005).

Equally, the meaning of 'human dignity' is ambiguous and its scope of application difficult to ascertain. Scholarly research on the historical and philosophical foundations of the concept and its judicial and constitutional interpretation points to the absence of a transnational consensus and determinate meaning (Christopher McCrudden, "Human Dignity and Judicial Interpretation of Human Rights," 19 *EJIL* 655 (2008)). In the absence of a clear consensus (for instance, on whether 'human dignity' may be ascribed pre-natally), efforts to clarify the meaning and content of scientists' responsibilities, safeguards and remedies by reference to human dignity should continue to be targeted to the protection of the rights and dignity of persons, as required by the UN Declaration of Human Rights (1948). See H. Schmidt, 'Whose Dignity? Resolving ambiguities in the scope of 'human dignity' in the Universal Declaration on Bioethics and Human Rights' *J Med Ethics* 2007, 33:578-584.

Yours sincerely,

Professor Aurora Plomer