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**PERMANENT MISSION OF INDIA, GENEVA**

**11<sup>th</sup> Session of the Human Rights Council**

Wednesday, June 3, 2009

**INTERACTIVE DIALOGUE ON**

**Report of the Special Rapporteur on the Right of Everyone to the Enjoyment  
of the Highest Attainable Standard of Physical and Mental Health,**

**Mr Anand Grover, and**

**Report of the Special Rapporteur on Promotion and Protection of Right to  
Freedom of Opinion and Expression, Mr Frank La Rue Lewy**

Mr. President,

We thank all the three distinguished Special Rapporteurs for their reports but would like to confine our remarks to the reports of Special Rapporteurs Mr Anand Grover, and Mr Frank La Rue Lewy.

2. We thank Special Rapporteur Mr Anand Grover for his insightful report that is a welcome initiative on the impact of the Agreement on Trade-Related Aspects of Intellectual Property Rights, or TRIPS, on access to medicines and, thus, on the right to health.

3. Affordable access to medicines for life-threatening diseases is an indispensable part of the right to health and it is the duty of governments to ensure such access, both in terms of availability and affordability. India concurs with the view that the TRIPS Agreement does not in any way undermine the legitimate right of governments to formulate their own public health policies and implement them by adopting measures to protect public health. In fact, the Doha Declaration on public health affirms that the TRIPS Agreement “can and should be interpreted and implemented in a manner supportive of governments’ rights to protect public health and, in particular, to promote

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access to medicines for all”. Articles 7 and 8 of the Agreement too clearly state that it “should contribute to the promotion of technological innovation and to the transfer and dissemination of technology ... in a manner conducive to social and economic welfare, and to a balance of rights and obligations”. In this context, it must be reiterated that the overarching public policies, in particular health policies, cannot be made subservient to patent rights and private corporate profits.

Mr. President,

4. India is encouraged to learn that the Special Rapporteur has highlighted the difficulties that the developing countries have had to overcome in the recent past in order to implement the TRIPS flexibilities. Severe resistance faced by developing countries upon the establishment of high patentability standards, in order to address evergreening of patents, has also been brought to light. The Special Rapporteur has rightly warned the developing and least developed countries from being coerced into entering TRIPS-plus FTAs that would infringe upon the right to health. It is a tragedy that even international organizations like the WHO, with a mandate on public health, have become a battleground for intellectual property rights. We are all familiar with the recent attempts to coin a new and broad definition of the term counterfeit so as to include legitimate generic drugs. In this context, India takes positive note of the conclusions and recommendations of the Special Rapporteur devoted exclusively to guard the ability of developing and least developed countries to protect the right to health of their citizens in an environment of stringent intellectual property regime that is aimed at doing just the contrary.

Mr President,

5. On the issue of the first annual report by the **Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Mr Frank La Rue Lewy**, we attach a particular significance to this mandate and support the continuing work by the Special Rapporteur in highlighting the violations of the right to freedom of opinion and expression, especially when exercised against journalists. We are nevertheless constrained to express our disappointment with the latest report for the absence of any fresh, concrete ideas, on the two areas of work that the Special Rapporteur has chosen for priority, namely access to information in

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situations of extreme poverty, and safety and protection of media professionals. While it is commendable that the Special Rapporteur intends to build on the achievements of his predecessors, it is unfortunate that he has not dwelled at length on either of these two issues, both of which have been under focus in several reports of his predecessors. In particular, the thrust of his argument on access to information in a poor society, that is the desirability of a plurality of accessible information flows through multiple broadcasting outlets, has already been addressed in a more nuanced manner in a previous report (*E/CN.4/2002/75*) seven years ago in 2002. We would, therefore, appreciate if the Special Rapporteur could elaborate on how he plans to take these ideas further, along with his plans to include in his future reports the instances of the abuse of the right to freedom of expression, as mandated in para 4(d) of Resolution 7/36.

6. Mr President, we recognize the utility of strengthening the voices of people living in poverty through improved access to media, and of tools such as community-based broadcasting that have been mentioned by the Special Rapporteur. However, it is our understanding that UNESCO has already done considerable work in this area. We would, therefore, request the Special Rapporteur to share information as to how his work would be distinct from, and add value to, UNESCO's work? At the same time, Mr President, we would also have strong reservations on any revisionist interpretation of this theme to imply that *lack* of media access is a *cause* of poverty. Poverty, as is well known, is a complex social phenomenon whose root causes go back deep in history, including to socio-economic changes caused under colonialism.

7. Lastly, Mr President, we would like to express a note of caution on the various press releases or statements made by the Special Rapporteur. To the extent that any Special Rapporteur is permitted to make a public statement under Articles 12 and 13 of the new Code of Conduct, it is mandatory for the Special Procedures to ensure that the Council and the State concerned are the first recipients of the Special Procedures' conclusions and recommendations. We would, therefore, like to be assured by the Special Rapporteur that the country-specific press releases that he has made were issued *after* he wrote to these States expressing his concerns, and that the press releases *contained* the responses given by the concerned state, as is required under Article 13 (a) of the Code.

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Thank you, Mr President.