

**ACADEMIC FREEDOM, INTELLECTUAL PROPERTY AND HUMAN RIGHTS OF EDUCATORS IN THEIR DIGITAL LEARNING CREATIONS (By Dr. Atty. Noel G. Ramiscal, All Rights Expressly Reserved)**

**VI. CHALLENGES TO THE HUMAN RIGHTS APPROACH**

The notion of a human rights approach to intellectual property is a relatively unsettled territory. The literature on this issue is not extensive. As pointed out by Dr. Audrey Chapman of the American Association for the Advancement of Science, this approach to intellectual property rights is beleaguered by several difficulties. The drafters of the ICESCR did not lay the foundation for interpreting the provisions of Article 15. The main concern was the appropriateness of including ownership of intellectual property rights in the Convention [84]. The succeeding years did not bring much elucidation to this area. In fact, Dr. Chapman claims that Article 15 is the “most neglected set of provisions within an international human rights instrument whose norms are not well developed” [85] as compared with the civil and political rights that were enshrined in the International Covenant on Civil and Political Rights (ICCPR) [86].

There is also what Dr. Chapman termed “intellectual fragmentation” [87] when it comes to the appreciation of the legal implication of this approach by legislators and policy makers who tend

to view intellectual property rights in purely economic terms. Human rights lawyers in turn, rarely deal with intellectual property issues in science and technology, and very few intellectual property lawyers even see the human rights implications of these issues. The body of work Dr. Atty. Ramiscal has mostly encountered did not use primarily and explicitly the human rights approach to examine intellectual property issues in the creations of educators and determine their relationship with academic freedom [88].

The 1997 Recommendation, which used the human rights perspective in dealing with civil and political rights of educators that affect their academic freedoms [89], did not even attempt to use the same approach, or delineate its scope with respect to the treatment of intellectual property rights of educators that impact on their academic freedoms. The Joint ILO/UNESCO Committee of Experts on the Application of Recommendations concerning Teaching Personnel has only noted the importance of intellectual property rights to the academic freedom of educators [90] but has not articulated any useful rationale for the linkage. The Committee has also not stated any guideline as to the applicability of the human rights approach to settling the specific issue of the academic freedom of educators being influenced by intellectual property rights disputes over their academic works.

## **20. The 2006 Committee On Economic, Social And Cultural Rights (CESCR) Comment**

It was only in January 2006 that the Committee on Economic, Social And Cultural Rights (CESCR) released a General Comment (CESCR Comment) relative to Article 15, in particular, on the protection of the moral and material rights of authors over their works [91]. The CESCR Comment was made to help those States which are parties to the ICESCR understand the Covenant's provisions so they can implement them. The comment has made some significant statements that will change the understanding of the nature of these rights [92]. However, since 2006, there has been no update on the CESCR Comment.