

Via email to: cescr@ohchr.org

Committee on Economic, Social and Cultural Rights (CESCR)
Human Rights Treaties Division (HRTD)
Office of the United Nations High Commissioner for Human Rights (OHCHR)
Palais Wilson - 52, rue des Pâquis
CH-1201 Geneva (Switzerland)

Subject: Comments on the Committee's Draft General Comment on Science

To the CESCR:

On behalf of the Scholars at Risk Network, we thank the members of the committee for your efforts to develop a much-needed General Comment on Article 15 of the ICESCR. We congratulate you on the consultative process and the draft circulated, and are pleased to provide the comments below.

By way of background, Scholars at Risk (SAR) is an international network of more than 500 higher education institutions in 41 countries dedicated to protecting the human rights of scholars around the world, and to raising awareness, understanding of, and respect for the principles of academic freedom and its constituent freedoms of expression, opinion, thought, association, and travel. SAR's primary activity is the protection of academics, researchers, students and other intellectuals who are threatened or persecuted for the exercise of academic, scientific or creative freedoms. Since 2000, SAR has assisted over 1500 such individuals from 98 countries/territories. SAR also undertakes related advocacy, research and education activities. SAR's Academic Freedom Monitoring Project invites researchers from around the world to assist in monitoring attacks on higher education communities, and each year publishes an annual *Free to Think* report documenting such attacks and advocating for effective responses from States, the higher education sector and civil society. (Since 2015, SAR has documented more than 2,000 attacks in 112 countries.) SAR also supports research and teaching projects aimed at building understanding and respect for academic freedom and related values, including especially a free online course, Dangerous Questions: Why Academic Freedom Matters, taken by over 2,800 participants from over 126 countries, and related workshops and publications. SAR has NGO observer status with ECOSOC and UNESCO.

It is from the context of this work, and with special attention to the possible unintended, negative interpretations of the current draft language which might harm the well-being of scholars and respect for scientific or academic freedom, that we offer the following comments.ⁱ

Paras. 6, 7: Definitions

We would recommend including in addition to the definition of "science" definitions of the "scientific community" and "pseudoscience", both of which are mentioned in the draft without definition, and both of which have implications for possible malicious misinterpretations aimed at restricting rather than enhancing the right. We would also recommend standardizing the language throughout related to "applications" of science. For example, we note the different constructions in para. 22 ("applications and products" [of science]), para. 23 ("applications of science"), para. 24 ("applications and benefits of science"), without a clear purpose to the distinctions.

Paras. 12, 13, 16: Right of "everyone" to take part in science

With regard to the several valuable recognitions in the draft of the "right of every person to take part in" science, we would recommend an appropriate qualifier such as "commensurate with their capacity and

training” or “on the basis of their capacity” (as in para. 23), so as to recognize that general participation in science, the scientific process, and the applications and benefits of science, absent specialized training, do not transform members of the general public into representatives of the “scientific community,” which could support efforts to cause confusion or cast doubt on legitimate scientific consensus. The inclusion of a definition of “scientific community”, as suggested above, would also help to address this concern.

Para. 18: Scientific freedom

From SAR’s perspective, the draft language in this paragraph presents the greatest risk of possible unintended, negative interpretations which might harm the well-being of scholars and respect for academic freedom. We recommend that the language be adjusted to expressly recognize not only research but *analysis and expression* of findings; to state explicitly the essential freedom of researchers in defining the objectives of research without interference, subject only to standards of professional and ethical responsibility; and to include reference to the protection of the *autonomy of scientific institutions* from outside interference, which is essential to the protection of scientific freedom of researchers. We recommend including reference in this paragraph to the essential link between scientific freedom and quality (which link is also included in para. 25). We also recommend removing the final sentence on limitations as unnecessary and redundant; the prior text already summarizes the professional and ethical limitations on the freedom of researchers, and these are spelled out in detail in later provisions. The final sentence stating the freedom is not “absolute” in an unnecessary emphasis on the stated limitations which could invite abuse and an erosion of the right itself. In sum, we recommend:

“Science and scientific quality requires a robust protection of freedom of research, analysis and expression to flourish and develop. Thus the Covenant establishes a specific duty for States to “respect the freedom indispensable for scientific research” (art 15.3). This freedom includes at least the following dimensions: the protection of researchers from undue influence on their independent judgement; ~~their possibility to contribute~~ the freedom of researchers to ~~the define~~ ~~tion~~ of the aims and objectives of the research and the methods to be adopted, consistent standards of their profession, and in a manner which should be humanely, scientifically, socially and ecologically responsible; the protection of the autonomy of scientific institutions from outside interference, which is essential to the protection of scientific freedom of researchers; the possibility to express freely and openly on the ethical, human, scientific, social or ecological value of certain projects and the right to withdraw from those projects if their conscience so dictates; the possibility of researchers cooperating with other researchers nationally and internationally; the sharing of scientific data between researchers, with policymakers, and with the public wherever possible. ~~However, freedom of scientific research is not absolute; some limitations are possible, as dealt with below.~~”

Para. 19: Interdependence with other rights

This provision could be strengthened by adding an explicit reference to the right to education, ICESCR Art. 13 and the related General Comment 13 which references academic freedom. We recommend:

“The development of science is also strongly linked with the enjoyment of the right to education, which it has been recognized in General Comment 13 to necessarily include protection for the freedom of researchers and autonomy of research institutions. ...”

Para. 23: Accessibility and nondiscrimination

Many of the restrictions on academic, scientific or creative freedoms raised in SAR’s casework involve the targeting of individuals not only on the grounds listed, but also grounds of thought, opinion or belief (e.g., because of religious or political belief). Such targeting clearly violates principles of the UDHR,

ICCPR and ICESCR. We would therefore recommend including “thought, opinion, or belief” among the listed prohibited grounds. We would also support including explicit reference to sexual identity, rather than relying on the presumed inclusion in “gender” or “other relevant status.”

Para. 25: Link between quality and scientific freedom

We appreciate the Committee’s including explicit reference to the link between scientific freedom and quality, but would recommend amending the text to include explicit mention not only of research but analysis and expression of findings. We recommend:

“Quality includes freedom of scientific research, analysis and expression: States Parties should respect freedom of scientific research, analysis and expression, and should refrain from unduly interfering in the agenda and methods of the scientific community. ...

Para. 26: Acceptability

We recommend reordering the current language in the first sentence to avoid the misimpression that subjective acceptability overrides the obligation to disseminate the results of scientific research. We recommend replacing the current first sentence with this:

“Efforts must be made, in ways that do not affect their integrity, quality and purpose, to ensure that the results of scientific research should be explained and its applications disseminated in such a manner as to facilitate their acceptance in different cultural and social contexts, even while recognizing that some ideological, religious or cultural beliefs may be disturbed by the progress of science.”

Para. 28: Limitations on freedom

Again, we recommend including explicit mention not only of freedom in research but also analysis and expression of findings. We recommend:

... Such limits however should not undermine the freedom necessary for scientific research, analysis or expression, or infringe on the possibility to benefit from science....”

Paras. 32, 46, and 56: Obligation to refrain from disinformation about science

Implicit within the positive obligations of progressive realization of the right, promotion of science, and dissemination of scientific research, and implicit throughout the draft comment, is a State obligation to refrain from disinformation about science (a term used by the Joint Free Expression Rapporteurs in their 2017 statement), including intentionally disparaging science or misinforming the public so as to erode citizen understanding and respect for science or scientific research. We recommend that this obligation be stated explicitly. We recommend at **para. 32** adding the following language:

“... Examples of retrogressive measures include the removal of programs or policies necessary for the conservation, the development and the diffusion of science; the imposition of barriers to education and information on science; the imposition of barriers to citizen participation in scientific activities, including disinformation, disparagement or deliberate misinforming intended to erode citizen understanding and respect for science and scientific research; the adoption of legal and policy changes that reduce the extent of international collaboration on science, etc. ...”

We recommend at **para. 46** the following amendments:

“The obligation to respect requires that States Parties refrain from interfering directly or indirectly in the enjoyment of this right. Examples of the obligation to respect are: ensuring that there are no barriers to access, without discrimination, to education and a scientific career which must be based mainly on criteria of competence and merit, ~~except in relation to~~ while allowing for temporary measures for achieving substantive equality; refraining from disinformation, disparagement, or deliberate misinforming intended to erode citizen understanding and respect for science and scientific research; the elimination of censorship or limitations on access to the Internet which affect access to and dissemination of scientific knowledge; eliminating obstacles to international collaboration among -scientists, unless where such obstacles may be justified, in accordance with article 4 of the Covenant, as necessary for promoting general welfare in a democratic society.”

We recommend at **para. 56** including the following additional language in the minimum essential levels of the rights related to science:

- “To refrain from disinformation, disparagement, or deliberate misinforming of the public so as to erode citizen understanding and respect for science and scientific research;”

Similar language could instead be included in **paras. 50, 58, 86**.

Para. 43: “Some” legitimacy

We recommend removing or editing the reference to “some legitimacy” of inequalities in scientific education and access to innovations, as it may be subject to misinterpretation or abuse. We recommend deleting the reference and leaving the remaining sentence as:

“These allow them to become more technologically proficient and productive than poor people, perpetuating inequalities ~~and providing them with some legitimacy.~~”

Alternatively, we suggest inserting modifying language “the appearance of”, leaving the sentence as:

“These allow them to become more technologically proficient and productive than poor people, perpetuating inequalities and providing them with the appearance of some legitimacy.”

Para. 48: Victims of pseudoscience

The claims of pseudoscience may victimize persons in all sectors of society, regardless of status, education or privilege. Failing to recognize this may impair efforts to establish protective measures against pseudoscientific claims and to defend scientific research. We recommend amending the language in the last sentence to correct the misimpression that only vulnerable parts of the population are susceptible. We recommend:

“States Parties must also establish protective measures in relation to messages from certain pseudoscience which, often due to purely economic interests, create ignorance and false expectations in the population generally, and often target the most vulnerable parts of the population.”

Para. 56: “minimum essential levels of the rights”

As noted above, we recommend including an explicit reference to the obligation to refrain from disparaging science or deliberately misinforming the public about science and scientific research. We also recommend clarifying the provision on “religious visions” by referencing the definition of science:

- “To ensure that scientific education in both public and private schools respect the best scientific knowledge and that cultural, religious, artistic or other visions, which do not satisfy the definition of science in paras. 6-7 ~~when necessary~~, are presented, as appropriate, in a different field;”

Para. 59: “some decisions” and public scrutiny of science

We recommend revising the language in the first sentence to remove the ambiguity about decisions in science which should be subject to public scrutiny versus those that are within the scope of scientific freedom, with the former specifically including decisions related to public funding, discrimination, ethics and risk of public harm. We recommend:

“~~Consistent with due respect to the freedom indispensable for scientific research, some~~ decisions concerning the orientation of publicly funded scientific research or the adoption of certain technical advancements which have bearing on public health, safety or well-being, should be subjected to public scrutiny and citizen participation. As far as possible, scientific or technological policies should be established through participatory and transparent~~ey~~ processes and should be implemented with transparency and accountability mechanisms.”

Para. 86: National plans of action

We are concerned that the language as drafted could be used to justify undue interference with scientific and academic freedom. We strongly suggest removing or reformulating the paragraph to deemphasize State coordination or direction of science research in favor of State action promoting access to science. We recommend:

“Second, States Parties have to develop a national plan of action to promote access to scientific progress, education, research, analysis, expression, products and technologies ~~and to disseminate its results and products~~ to all persons without discrimination. ~~Without undermining~~ Consistent with scientific freedom of researchers and autonomy of scientific institutions, a national plan of action for access to science and technology will ensure that ~~different~~ scientific endeavors and their results are ~~not carried out in isolation and without coordination, but are part of a~~ reflected in a State’s integrated efforts for the promotion, conservation and diffusion of science. ...”

We appreciate your consideration of the above recommendations, and look forward to the continuing development and ultimate release of the General Comment.

Sincerely,



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¹ In addition to the comments provided, the following drafting issues are flagged for your consideration: para. 3, line 4, should read “aims at assisting”; para. 51, line 3, delete “according”; para. 53, line 2, should read “scientists have”; para. 59, line 4, should read “transparent processes”; p.14, para. 69, line 1, should read “treatment resistant epilepsy”; para 70, line 5, should read “right to benefit”; para. 89, line 2, should read “might be brought together”.