**Committee on Economic, Social and Cultural Rights**

**Draft General Comment on Science and Economic, Social and Cultural Rights**

**Comments of the Government of the United Kingdom of Great Britain and Northern Ireland**

1. The Government of the United Kingdom is grateful to the Committee on Economic, Social and Cultural Rights for its work on drafting a General Comment on Science and Economic, Social and Cultural Rights. We thank the Committee for the opportunity to provide comments on the present draft.
2. The UK’s position on a number of issues does not align with those of this General Comment and the UK takes issue with the general, expansive approach of the Committee, which extends beyond the scope of the International Covenant on Economic, Social and Cultural Rights (ICESCR). In this response, we outline our position on several main issues contained within the draft.

The ‘right to participate in and contribute to scientific development’, the ‘right to science’ and the ‘right to publish the results of research’

1. The UK’s position is that human rights are legal obligations undertaken between States with regard to how they treat their own citizens and others within their respective jurisdictions. They are underpinned by the ratification by States of internationally binding treaties, such as the ICESCR. States are legally obligated to fulfil their human rights obligations, as explicitly laid out in those treaties to which they are party.
2. Those treaty obligations are to be interpreted in the light of any subsequent agreements between the States parties, any subsequent practice in the application of the treaty by the States parties, and any relevant rules of international law.[[1]](#footnote-1) We find insufficient evidence, in any of those three categories, for the supposition put forward in this draft General Comment that new human rights in the scientific field – such as the ‘right to participate in and contribute to scientific development’, the ‘right to science’, or the ‘right to publish results of research’ (and variants of these) – have been established beyond those specified in the text of Article 15 of ICESCR.
3. Furthermore, the draft General Comment also suggests that States parties have extraterritorial obligations in respect of the supposed ‘right to participate in science’. Even if this right were established, the obligations of each State party to human rights treaties, like ICESCR, applies to its own territory and any other territories or persons over which it has jurisdiction.

Application of the right to benefit from scientific progress and obligations

1. Paragraphs 31 and 32 of the draft General Comment are clear that the right to benefit from scientific progress may be achieved progressively,[[2]](#footnote-2) yet the draft regularly refers to states’ obligations to “fulfil” this right. References to “fulfilling” this right should be replaced with references to “*progressively realising*” it.
2. With respect to paragraph 32 in particular, the UK agrees that retrogressive measures in relation to the right to benefit from scientific progress should be avoided, but there may be entirely appropriate justifications to end a particular policy or programme. The words *“or appropriate”* should be inserted after “may be inevitable” in the third sentence.
3. Paragraphs 54 to 56 outline the ‘core obligations’ of this right, stating that there are ‘minimum essential levels of each right’, which must be realised immediately. The UK recalls that States parties negotiating the treaty did not recognise or stipulate the existence of ‘core obligations’ or ‘minimum essential levels of each right’.
4. Paragraph 88 should be deleted. Economic, social, and cultural rights are not directly enforceable or justiciable, unless specifically incorporated into domestic law. The ICESCR does not oblige States to directly incorporate the Covenant into domestic law by means of bespoke legislation. The UK does not automatically incorporate into domestic law the treaties to which it is party, instead giving effect to international obligations through a combination of legislative and administrative measures.

Intellectual Property Rights

1. This draft General Comment also covers the increased rapid development in science and technology, and the right for everyone to benefit from this progress and any scientific, cultural, literary or artistic production that a person may create. It sets out a position on intellectual property (IP) rights to which the UK cannot subscribe.
2. It is the UK’s position that IP rights underpin investment in research and manufacturing, reward innovation in design and branding, and support creativity of all types. An effective IP and patent system incentivises innovation across technological fields. While there is a balance within the patent system between the interests of innovators and those of the public, measures that undermine the incentive inherent to the patent system can be detrimental to innovation, and ultimately society. This General Comment entirely ignores the benefits of IP, and we suggest that it would benefit from the addition of analysis on the advantages which IP rights offer. We have also outlined below a few of the particularly problematic statements below.
3. Paragraph 65 states that “IP can also block the necessary sharing of results of scientific research”. However, IP rights provide a mechanism for turning research and ingenuity into assets. For example, a patent confers rights to the patent holder, for a limited time, as part of a quid pro quo. Publishing this knowledge creates an iterative cycle of innovation and, in turn, brings benefits to society by delivering innovations, technologies, artistic creations, and medicines.
4. The UK agrees that the right balance needs to be found between competing interests that surround innovation, including those of producers, consumers and social interests more generally. However, it is not correct that say that IP negatively affects the advancement of science, as stated in paragraph 63. The UK position is to recognise the investment and innovation that IP brings, particularly in meeting health needs. We also object to the statement in paragraph 66 that “States should make all efforts, in their national regulations and in international agreements on IP to avoid an “unacceptable prioritization of profit for some over benefit for all””. For those areas that face a lack of investment, it is important that States use incentive mechanisms. These include a range of approaches such as public/private partnerships, open source drug discovery and development, grants, prize funds, advance market commitments, tax breaks for companies, patent pools and priority review vouchers to encourage research and development of drugs to meet the needs of all countries.
5. Paragraph 65 also states that “patents limit the possibility to access some data for a certain period of time”. We believe this refers to data exclusivity for medical trials. However, this is not related to patents. Equally, the same paragraph states that “patents give to patent holders a temporary monopoly to exploit the product or service they have invented”. This is incorrect, as a patent will give the holder a right to stop others from exploiting the product or service without permission.
6. Paragraph 66 outlines that “States have to take all steps to avoid the possible negative effects of IP on the enjoyment of the right to share in scientific progress in particular and of all ESCR in general”. This sentence should read “States *should* take *appropriate* steps to avoid negative effects of IP…” and should acknowledge the significant benefits of IP that are not currently reflected in the draft.

Controlled Substances and Science

1. Regarding paragraphs 69 and 70, the international conventions cited in footnote 36 do not, in themselves, “impede” research as they allow access for medical and scientific purposes and States parties have committed to ensuring their availability for these purposes. States parties also have flexibility to develop national legislation. Paragraph 69 should therefore begin: *“Scientific research is controlled for some substances which fall under the international conventions on drug control and are classified as having little or no therapeutic value.”*
2. It is also important to note that the substances are classified by these conventions only upon recommendation from the World Health Organisation’s Expert Committee on Drugs and Dependence (ECDD), which takes into account the available evidence to make an assessment on a substance’s danger to health, risk of abuse and therapeutic value. Where new evidence comes to light, ECDD can revisit the scheduling status of a substance where scientific evidence warrants it.

Discrimination

1. The UK firmly believes that States must address the barriers to equal opportunities in order to create a fairer society, by improving equality and reducing discrimination and disadvantage for all. However, the intended meaning of the word ‘barrier’ in this General Comment is not always clear. Specific competency requirements and qualifications are not a ‘barrier’ to equality, but can be vital tool to demonstrate an individual’s competency, merit, and suitability for a job or course.
2. Paragraph 39 states that “temporary measures, such as the establishment of quotas reserved for women in scientific education, might be necessary”. The UK firmly believes that is important to monitor gender participation at every educational stage, so that governments have a very clear picture of participation rates. Targeted action should be taken to address gender imbalance concerns across all educational phases, but we do not believe that setting quotas is likely to help us properly tackle this issue in a meaningful way. Therefore, we request that this sentence is deleted.

Freedom of Expression

1. The UK supports freedom of expression as a vital part of a democratic society and we have a long history of promoting freedom of expression globally. Freedom of expression, including the right to information (as a component of the right to freedom of expression), is required to allow innovation to thrive and ideas to develop; it leads to more secure and prosperous societies. The right to freedom of expression must be protected for all, including scientists, who should be able to share their research. Scientists may openly discuss their research, self-publish, or seek an interested publisher, and share their scientific outputs. Nevertheless, neither this right to freedom of opinion and expression nor Article 15 ICESCR establishes a human right to publish the results of research. As stated at the outset, it is not within the power of the Committee to create new human rights, within a General Comment or otherwise.

14 February 2020

1. Vienna Convention on the Law of Treaties, Article 31(3). [↑](#footnote-ref-1)
2. The ICESCR is also clear that the rights contained within the Covenant may be achieved progressively, as per Article 2(1). [↑](#footnote-ref-2)