

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

Sixty-fourth session

24 September – 12 October 2018

Item (3) of the agenda

### **DAY OF GENERAL DISCUSSION** 9 October 2018, Palais des Nations, room XVI

#### **Discussion Paper**

#### **I. Introduction**

1. The UN Committee on Economic, Social and Cultural Rights will hold a day of general discussion on article 15 of the International Covenant on Economic, Social and Cultural Rights on the right to enjoy the benefits of scientific progress and its applications and on other provisions of article 15 on the relationship between science and economic, social and cultural rights. The discussion will take place on **Tuesday, 9 October 2018**, during the 64<sup>th</sup> session of the Committee, at **Palais des Nations Room XVI, in Geneva**.
2. The discussion day is part of a consultative process in the context of the drafting of a general comment on the relevant provisions of article 15. The future general comment aims to provide authoritative guidance to States parties on the measures to be adopted to ensure full compliance with the right.
3. While the Committee has had a number of informal consultations with interested parties on this project, the discussion day will provide an opportunity to receive inputs from a wider range of stakeholders. Through this meeting, the Committee seeks to enrich its reflections with the ideas and contributions from eminent experts in the field for whom this concept paper is suggested as the starting point for reflection.
4. The experts are not asked to respond to all of the questions nor restrict themselves to those set out in this discussion paper as the only issues open to debate by the Committee. This guide merely aims to propose the discussion topics which have been of most interest to the Committee during its internal discussions: on some of these issues the Committee has made significant progress towards a shared position; as regards other issues the debate is still open and the experts' contributions will be extremely useful for the work still to be done.
5. The Committee would also like to request that the States, who are the main addressees of any general comment, to report on their position or give their opinion on the issues open to debate. The Committee is also interested in civil society participating in this debate. Representatives of States, United Nations and regional human rights bodies and agencies, national human rights institutions, civil society and human rights defenders, individual experts and other stakeholders are invited to take part by attending the meeting and/or submitting written contributions.

#### **II. Main issues and discussions concerning science and economic, social and cultural rights**

6. Science and its applications were considered first of all by the Universal Declaration (UD) and afterwards in the International Covenant on Economic, Social and Cultural

Rights (ICESCR). The right “to enjoy the benefits of scientific progress and its applications” and the other contents relating to science and its applications contained in art. 15 of the ICESCR nowadays have as much or even more relevance as at the time when they were approved. However, the reports that the States submit in compliance with their reporting duty do not consider these issues relating to science and its applications in sufficient detail and coherence. Gradually the reports from the States have started to include more issues relating to science, but an even greater effort is still required. During the discussions, the Committee has found it necessary to clarify certain aspects relating to science and its applications under said article 15.

7. The Committee is of the view that the time has come to collaborate with the States in this effort through a general comment which will examine the issue and provide guidelines to improve the reports. In its study, the Committee has as background the experts’ meeting organised by UNESCO<sup>1</sup> and the 2012 Report from the Special Rapporteur in the field of cultural rights<sup>2</sup>.
8. The issue of science appears in the Covenant on Economic, Social and Cultural Rights in article 15 among cultural rights:

Article 15

1. The States Parties to the present Covenant recognize the right of everyone:

(a) To take part in cultural life;

(b) To enjoy the benefits of scientific progress and its applications;

(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

9. This issue was also referred to in article 27 of the Universal Declaration:

Article 27.

(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

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1 UNESCO Expert’s Meeting: The Right to Enjoy the Benefits of Scientific Progress and its Applications, Venice, July, 2009

2 A/HRC/20/26: The right to enjoy the benefits of scientific progress and its applications

10. Should we read the ICESCR article 15 in connection with UDHR article 27? The verb “share” in the English version equates in some other linguistic versions to the verb “participate”. Does this have any consequence?
11. Both in the ICESCR and the UDHR, the issue of science is related to culture. Should we assume that science (and its application) is one of the cultural rights?
12. Some unregulated developments of science and technology have sometimes had a negative impact on the enjoyment of other rights, for example when technology is placed in the service of war and destruction. In addition, other issues also require consideration, for example, the environmental risks associated with certain scientific developments, the moral limits of biotechnology and technology’s capacity to affect our privacy, identity and moral rights through the use of the internet and data processing, just to mention a few. How should a general comment include the question of the harmful use of science and the corresponding protection of people? How should States regulate scientific activities to prevent these risks without undermining the freedom indispensable for scientific research?
13. Women are often relegated in scientific activity and its benefits. Sometimes this is due to situations of direct discrimination in the access to education or professional promotion. In other cases, the discrimination is more subtle and based on stereotypes or professional practices which discourage women’s participation in science. How should a general comment consider this question?
14. The Universal Declaration refers to “scientific advancement” and the International Covenant to “scientific progress”, both as an entitlement. In addition, the Covenant develops the normative content of the right citing “scientific progress”, “scientific production”, “science”, “scientific research” and “scientific fields”. Should we understand that science (and its applications) include technology and technological development?
15. This general comment should not intend to delve into such a broad issue as the definition of science, which might go beyond our capabilities and mandate, and would surely lead to philosophical debates which might distract us from our mission. But surely we need some conceptual guidelines to delimit the concept. Should this concept assume that science is about a process (doing science), a methodology (research, checks) and results (knowledge)? Should science include natural and social sciences? And humanities? Should we understand that science is universal and should we include elements such as debate, demonstration and replicability, falsifiability, testability or intersubjective verification or objective refutation?
16. Not all kinds of knowledge are science. How should we consider other kinds of knowledge or cultural traditions that are not science? What is the relationship between cultural rights and science? How should we consider the issue of pseudosciences?
17. “Benefits” refers in general to the material results of scientific research (medicines, vaccinations, fertilizers, a technological instrument and so on) but should “benefits” also refer to other elements apart from the material results? For example, knowledge itself and science’s role in forming critical and responsible citizens, both via formal and informal education (dissemination)?
18. The right to enjoy the benefits of scientific progress and its applications seems to be a right of access to the material benefits of science, e.g. drugs, treatment, agricultural improvements and other technologies. Should this access also include access to knowledge including education, publications and contents? And access to the means of making science, particularly to the Internet?

19. All of these kinds of access have to be enjoyed without any type of discrimination. What kind of discrimination should be especially addressed by a general comment?
20. Access to knowledge implies that the State is bound to guarantee that sufficient scientific contents are taught in formal education, from primary level and beyond. What kind of relationship should it have with the right to education? How to reconcile the right to religious education with scientific explanations?
21. If there is a right to participate in science, how is it accommodated with people's different capacities and interests? What is the relationship between the so called "citizen science" and the Covenant?
22. Should this general comment also include the role of science in the democratic participation in decision-making concerning scientific and research policies?
23. Participation also includes the right to information and participation in controlling the risks involved in certain scientific activities or policies. What is the role of the "precautionary principle"?
24. Should the authorities of State parties consider the best scientific knowledge in their decision-making process? Is this part of the content of this right?
25. Scientific activity requires that there is respect for scientific and academic freedom without limits other than those accepted in a democratic society. The balance between scientific research freedom and the limits on research is a crucial aspect. The Covenant establishes in art. 4 that the right can only be subject to "such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society". What kind of problems do we face here? What more can be added?
26. Special attention must be paid when the scientific research affects human beings, in order to protect people's dignity, identity and desires. What kind of best practices should we consider?
27. The International Covenant refers to an enabling environment fostering the conservation, development and diffusion of science and technology. This implies some duties on the States Parties to promote the conservation, development and diffusion of science and technology, i.e. scientific and research investment (proportional to the GDP), activities of public awareness and dissemination, and formal and informal education; and also assets like libraries, databases, museums, exhibitions, etc. What kind of best practices should we consider?
28. In addition to the general appeal for international cooperation contained in article 2.1, there is a specific call in article 15 (encouragement and development of international contacts and co-operation in the scientific and cultural fields). What does it mean? Does it have any consequence in relation to international cooperation for development programmes? How to put science in the service of the SDG 2030 global effort?
29. The triple typology of obligations (respect, protect and fulfil) is completely applicable to this issue. What kind of content and best practices should be considered in relation to the duties of State to respect, protect and fulfil in relation to science and the rights enshrined in article 15 of the Covenant?
30. The Scientific Advisory Board of the United Nations in a report backed by UNESCO stated: "They call on all countries, including the poorest, to invest at least 1% of their GDP on research and urge the most advanced countries to spend at least 3% of GDP on R&D. This effort must also focus on reinforcing science education, notably in developing countries, and on improving girls' access to science courses." Is this a relevant guideline for the purposes of this general comment?

31. The economic situation of any given country and also poverty are sometimes used by some States as grounds to justify not investing in science and technology. How should we tackle this problem?
32. Do all countries, from the richest to the poorest, have to invest in both basic and applied science?
33. Elements of the right: Accessibility: what kind of best practices should be taken into account in relation to the rural-urban balance and minority languages? What does “quality” refer to in relation to science? What does acceptability mean? Is this right justiciable? Are transparency and accountability essential elements of this right?
34. The relationship between science, technology and human rights, and the issue of copyright or intellectual property was studied in detail in a specific general comment from this Committee on the “right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author”. This general comment no. 17 established a clear distinction between the existing intellectual property regime and the human right “to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.” Are more comments needed in the general comment now under consideration in addition to those included in the aforementioned general comment 17?
35. Some substances are strictly controlled under the international conventions on drug control, such as the 1961 Single Convention on Narcotic Drugs. This international regime undermines scientific research and access for some substances classified as with no scientific or medical value, although there is evidence that supports that there are uses for medical purposes. How can States ensure the right to freedom of research for substances that have potential therapeutic value, but that at the present have a strict control regime that holds back scientific research? How can States ensure the rights of citizens to enjoy the benefits of scientific advance for the case of controlled substances?
36. The protection of the moral and material rights may sometime place limitations in accessing science and its application, but it may also be necessary in order to foster the scientific activity. However, it must never under any circumstances be an insurmountable obstacle when other human rights and human dignity are concerned. How to balance these principles? What kind of good practices should be considered?
37. Local, traditional and indigenous knowledge, especially regarding nature, species (flora/fauna) and their properties has an important role to play in the scientific global dialogue and development. Science should incorporate all valuable inputs, including from indigenous and local knowledge systems, but at the same time respecting all indigenous rights and interests. How can this be achieved?
38. As we have seen, article 15 recognises the “right of everyone to enjoy the benefits of scientific progress and its applications” (art. 15.1.b), but it also adds obligations in order to ensure “the conservation, the development and the diffusion of science” (15.2.) and to “respect the freedom indispensable for scientific research and creative activity” (15.3.), and also recognises the “benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields” (15.4.). Is this right just about “enjoy the benefits...” or should we understand that there is a broader right in relation to science (with contents referred also to conservation, development, diffusion, freedom and international cooperation) that should be referred as a “right to science”? Should this general comment be a general comment on the right to enjoy the benefits of scientific progress and its application”, a “general comment on science and economic, social and cultural rights” or a “general comment on the right to science”?

### **III. Format of the discussion day**

39. The day of general discussion will take for the form of panel discussions. Each panel will be composed of three to four speakers, and will be followed by a general debate or questions and answers.

### **IV. Results and follow-up to the discussion day**

40. The Committee's Rapporteurs in charge of the drafting of the general comment will consider the information obtained during the discussion day as they develop a document to be presented to the Committee. Once a first draft of the general comment is available, the Committee will conduct another round of consultation, with a different format. Inputs at that stage will be taken into account in the drafting of the final version of the general comment for reading by the Committee in closed session and for adoption.

### **V. Practical information**

41. Representatives wishing to participate the meeting should request accreditation by 8 October 2018 via the page of the Committee's session on [UNOG's conference management platform](#). The number of persons per organization may be limited due to the constraints of space.
  42. All interested stakeholders can also send written and other forms of submissions to the Committee which will be posted on the Webpage. Written contributions should be sent electronically in Word format to the Secretariat (cescr-science@ohchr.org). Submissions should be in one of the working languages of the Committee (English, French or Spanish), must not exceed 5 pages and be transmitted by 5 October 2018. The Secretariat will not be in a position to translate the written submissions.
  43. The agenda of the meeting and this discussion paper will be published on the webpage of the discussion day.
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