**FROM: Andrea Boggio, JSD**

**TO: UN Committee on Economic, Social and Cultural Rights**

**Re: Draft of the General Comment “Science and economic, social and cultural rights” (Art. 15: 15.1.b, 15.2, 15.3 and 15.4 of the ICESCR)**

**DATE: February 14, 2020**

Dear Committee Members,

Attached to this letter, you will find my comments to the draft of the general comment “Science and economic, social and cultural rights (Art. 15: 15.1.b, 15.2, 15.3 and 15.4 of the International Covenant on Economic, Social and Cultural Rights).

I am grateful for the opportunity that this Committee has given to me and other stakeholders to comment on the Draft. I am also grateful for invitation to speak at the Day of General Discussion on the same draft, which was held in Geneva on October 9, 2018. As a science policy scholar, this was a great opportunity to engage with the Committee on this complex subject and address some of the questions that, at that time, were still open.

I commend the Committee for making sense of the complex relationship between science and human rights. It is important to acknowledged how difficult it is to capture fully in a single legal instrument. It is also important to acknowledge the contribution of scientific progress to the realization of human rights and other important goals (i.e., sustainable development goals, poverty eradication, undernourishment, climate change) that engage the core mission of the United Nations.

My comments to the draft are submitted in that spirit: a recognition of the complexity of the relationship between science and human rights and of the value of scientific progress in advancing the mission of the United Nations, particularly its human rights agenda.

Thank you again for your consideration, I wish you a productive discussion of the draft at the next working session of the Committee.

COMMENTS TO THE DRAFT GENERAL COMMENT ON SCIENCE AND ECONOMIC, SOCIAL AND CULTURAL RIGHTS[[1]](#footnote-1)

SUBMITTED BY

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1. ENDORSING THE USE OF “HUMAN RIGHT TO SCIENCE”

I respectfully recommend moving para. 89, the closing paragraph of the draft, to Section I with an explicit endorsement of the use of “human right to science.”

The reasons for using the term human right to science in the general comment are several.

First, Article 15 sets forth various rights, entitlements, liberties, duties, or obligations that relate to science. These rights, entitlements, liberties, duties or obligations are interconnected. Using a single concept to refer to all of the legal obligations would ensure that these rights, entitlements, liberties, duties or obligations are understood as being related to each other. The fact that this Committee has decided to examine Article 15.1.b, 15.2, 15.3 and 15.4 in the draft is evidence that they are intended to be construed a single bundle. Referring to this bundle with a single name ensures State Parties’ full appreciation of the various rights, entitlements, liberties, duties or obligations, both individually and as they connect with each other, and facilitates full compliance with their treaty obligations.

Second, this Committee is not new to promoting the use of the expression “right to …” that are not in the text of the Covenant:

* General Comment No. 14 is titled “The right to the highest attainable standard of health” refers to this right as “right to health” throughout the document, starting from the third sentence of the para. 1;
* General Comment No. 18 is titled “The Right to Work” and opens with the following statement: “The right to work is a fundamental right, recognized in several international legal instruments” (para 1). Most importantly, the right to work results from language that can be found in three articles of the Covenant (Articles 6, 7, and 8) and is conceptualized by this Committee as a single, unified right;
* General Comment No. 12 is titled “The right to adequate food (art. 11)” even though Article 11.1 of the Covenant uses a much longer formula to define this right: “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”

This Committee has aptly decided to use a short form to refer to a set of rights, entitlements, liberties, duties or obligations set forth in various articles of the Covenant. We believe that the same decision should be me for the rights, entitlements, liberties, duties or obligations set forth in Article 15.1.b, 15.2, 15.3 and 15.4.

Third, endorsing a human right to science will bring consistency and cohesiveness to the realization of 15.1.b, 15.2, 15.3, and 15.4 of the Covenant. As the drafters of the general comment note, “human right to science” has been increasingly adopted by the various actors of the international legal community (¶ 89). This Committee’s endorsement of a human right to science will more readily connect State Parties’ legal obligations to existing human rights literature.[[3]](#footnote-3) It will also help diffuse awareness amongst those who are not specialists in human rights of the least known human rights. Further, it will lead to abandoning other, less compelling expressions of the same bundle of legal obligations. One that appears, albeit not very frequently, in the literature is the “right to enjoy the benefits of scientific progress and its applications” or REBSPA.[[4]](#footnote-4) Its use is meant to do exactly what the expression “human right to science” is meant to do (conceptualize a set of rights, entitlements, liberties, duties or obligations bundled together), but it does it in a much less efficient way. On fact, the acronym is undoubtedly clumsy and of difficult pronunciation and spelling.

In conclusion, I respectfully encourage the Committee to use its authority to endorse the use of the expression “human right to science.”[[5]](#footnote-5)

1. ADDING A STATEMENT THAT THE HUMAN RIGHT TO SCIENCE IS A CULTURAL RIGHT

Science is a first and foremost the manifestation of human creativity. This idea was clearly laid out

by the Special Rapporteur in the field of cultural rights, Ms. Farida Shaheed, in her 2012 report on the right to enjoy the benefits of scientific progress and its applications:

The right to science tends to be considered in isolation from the right to participate freely in the cultural life of the community, to which it is usually juxtaposed with relevant instruments. The Special Rapporteur views these rights as inherently interlinked, since both relate to the *pursuit of knowledge and understanding* and to *human creativity* in a constantly changing world.[[6]](#footnote-6)

I fully subscribe to this view and believe that acknowledging at the outset of the General Comment will add weight to the instrument and provide a framing of the Comment that is consistent with the Covenant drafter’s inclusion of the various provisions of Article 15 under the heading of “cultural rights.”

Currently, the first paragraph focuses on the benefit but also fears that scientific progress may evoke. While scientific progress has “deep societal impacts,” the inclusion of science in the Covenant is to ensure that scientific progress is considered an inextricable and essential part of the human experience. Its societal impacts must be acknowledged, as they are throughout the draft general comment, but not at the outset of the document.

General comments are primarily directed at State Parties. It is essential that governments are reminded of the importance of this right at the very beginning of the document. Therefore, we suggest that the opening paragraph of the general comment on the importance of science as it relates to the pursuit of knowledge and understanding and to human creativity.

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In conclusion, I respectfully propose amending the Draft General Comment by substituting paragraphs 1 and 89 of the Draft with the following:

**1. Science is the expression of humans’ pursuit of knowledge and understanding and of human creativity. The inclusion of the right to enjoy the benefits of scientific progress and its applications among the cultural rights is a recognition of that science is an essential component of the human experience and is protected with rights, entitlements, liberties, duties or obligations that are brought together in a single broad concept named the human right to science.**

**2. Science is also an extraordinarily powerful tool for advancing human development and promoting the enjoyment of Economic, Social and Cultural Rights (Hereinafter: ESCR). The deep social impacts of science are not always positive. Some developments of science and technology can sometimes have a negative impact on the enjoyment of ESCR, for example, when they are placed in the service of war and destruction or when they result in new health or environmental risks. Additionally, access to the benefits of science is very unequally distributed across the world and within countries, sometimes due to the operation of intellectual property (Hereinafter IP).**

1. My comments focus exclusively Section I, para.1-4, and para. 89 of the Draft. [↑](#footnote-ref-1)
2. Department of History and Social Sciences, 1150 Douglas Pike, Smithfield, RI 02917, USA. [aboggio@bryant.edu](mailto:aboggio@bryant.edu). [↑](#footnote-ref-2)
3. I have used the expression “right to science” in my own writings. *See*, Andrea Boggio, “Would a Gene-Editing Ban Fit Human-Rights Law?,” *Nature* 569, no. 7758 (2019): 630; Andrea Boggio and Ho, Calvin W.L., “The Human Right to Science and Foundational Technologies,” *The American Journal of Bioethics* 18, no. 12 (2018): 69–71; A. Boggio, C.P.R. Romano, and J. Almqvist, *Human Germline Modification and the Right to Science: A Comparative Study of National Laws and Policies* (Cambridge University Press, 2020); Andrea Boggio et al., “The Human Right to Science and the Regulation of Human Germline Engineering,” *The CRISPR Journal* 2, no. 3 (2019): 134–42. [↑](#footnote-ref-3)
4. For scholarly use of the “right to enjoy the benefits of scientific progress and its applications” or REBSPA, *see e.g.*, Klaus-Dieter Beiter, “Where Have All the Scientific and Academic Freedoms Gone? And What Is ‘Adequate for Science’? The Right to Enjoy the Benefits of Scientific Progress and Its Applications,” *Israel Law Review* 52, no. 2 (2019): 233–91.b; Amrei Müller, “Remarks on the Venice Statement on the Right to Enjoy the Benefits of Scientific Progress and Its Applications (Article 15 (1)(b) ICESCR),” *Human Rights Law Review* 10, no. 4 (2010): 765–84; Eibe Riedel, “Sleeping Beauty or Let Sleeping Dogs Lie? The Right of Everyone to Enjoy the Benefits of Scientific Progress and Its Applications (REBSPA),” in *Coexistence, Cooperation and Solidarity (2 Vols.)* (Brill Nijhoff, 2012), 503–19. [↑](#footnote-ref-4)
5. “Right to science” is becoming widely used among scholars. Searches on Google Scholar for “right to science” and “REBSPA” returned respectively 798 results and 56 results. [↑](#footnote-ref-5)
6. A/ HRC/20/26, para 3 (emphasis added). [↑](#footnote-ref-6)