

To the Secretariat of the Committee on Economic, Social and Cultural Right (CESCR)

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Comments by the South Centre on the CESCR Draft General Comment on science and economic, social and cultural rights Art. 15: 15.1.b, 15.2, 15.3 and 15.4 (Draft version 2 January 2020)

The South Centre welcomes the opportunity to submit its comments on the Committee on Economic, Social and Cultural Right (CESCR) Draft General Comment on science and economic, social and cultural rights Art. 15: 15.1.b, 15.2, 15.3 and 15.4 and commends the Secretariat of the CESCR for this initiative.

We recognize the paramount importance of the ESCR and of Art. 15, which is a crucial element to ensuring other rights and the development of all countries.

We further acknowledge and reinforce the importance of the draft text to address multiple emerging and long-established issues, such as the risks and promises of the 4th Industrial Revolution and the relation of science and the right to food as two examples.

1. Privatization of scientific research and Intellectual Property¹

In **par. 62**, it could be added that a substantial part of scientific research receives support – including by financing – from public sector. This is the case, for instance, for basic research in biomedical science. An important issue of concern is that the results of the research can be privatized, i.e. exclude others from access, as opposed to incentivizing collaboration and sharing, as a result of the increasing scope of intellectual property that is claimed over research results.

In order to strengthen the position already stated by the paper, the first phrase of **par. 65** could be clarified (*“intellectual property can create distortions in funding of scientific research as private financial support might go only to research projects that are profitable, while funding for addressing issues which are crucial for the general welfare of society might*

¹ We consider “Intellectual Property” a more suitable expression, instead of its acronym “IP”, for clarity purposes.

not receive adequate support.”). An argument for such revision is that it is not intellectual property itself that can create such distortion. It is instead the promise of private financing that could derive from intellectual property protection.

Furthermore, **par. 65** could make reference to the role that States can play with public financing to drive research and development of products that address global problems. That would be the case of diagnostics, vaccines and medicines for disease areas in which there is little incentive from private investments that have for-profit motives.

Similarly to comments above, in **par. 66**, *“to counter distortions of funding associated with IP” could be rephrased*” to focus on the problem that the scientific community may be over relying on the promise that patents and other forms of intellectual property can act as a funding mechanism, when this is rarely the case. Thus, there is need for continued public support for research, in particular to serve the public interest and ensure broader dissemination of knowledge for scientific progress.

Finally, at the end of **par. 66**, the Committee could recall as an example the target 3.b of the UN Sustainable Goal 3², which notes that countries can use the flexibilities of the TRIPS agreement to promote access to medicines.

2. Access to Knowledge

Under *“IV. Obligations. E. Core Obligations, par. 56”*, we suggest the inclusion of the issue of “access to knowledge” as a positive obligation for countries. A possible non-exhaustive language could be *“to ensure access to knowledge, including but not restricted to, books, materials, instruments, Internet, audiovisual media and other instruments to gather, share and create different kinds of knowledge, including traditional knowledge”*.

Along the same lines, under *“V. Special topics of broad application. VI C. par. 65”*, include wording on the barriers posed by copyrights and related rights *“Second, IP can also block the necessary sharing of results of scientific research and its methods, which is crucial for the advancement of science. For instance, patents limit the possibility to utilize some data for a certain period of time. Further, the excessive price of some scientific publications is an obstacle for low-income researchers, especially in developing countries, particularly due to the lack of exceptions and limitations of copyrights for libraries, museums and research institutions, as well as stringent and unaffordable licensing agreements.”*

3. Conflict of Interest

Since the issue of conflict of interest is, in many jurisdictions, regulated not only with disclosure, but rather with effective limitation mechanisms (such as limitation of shareholder voting rights), it could be added in **par. 63** the following wording: “disclosure **and/or limitation** of these actual or perceived conflicts of interest”.

² *“3.b. Support the research and development of vaccines and medicines for the communicable and non-communicable diseases that primarily affect developing countries, provide access to affordable essential medicines and vaccines, in accordance with the Doha Declaration on the TRIPS Agreement and Public Health, which affirms the right of developing countries to use to the full the provisions in the Agreement on Trade-Related Aspects of Intellectual Property Rights regarding flexibilities to protect public health, and, in particular, provide access to medicines for all”*

4. *Traditional Knowledge and Science*

In order to ensure coherence throughout all parts of the text, we may suggest revision of **par. 7** (on the definition of science) and references to traditional knowledge (*V. Special topics of broad application. D. Local and traditional knowledge. Indigenous peoples and science, par. 67-68; VI. International Cooperation, par. 83*). **Par. 7** notes that “*Though other forms of knowledge may claim protection and promotion as a cultural right, knowledge should only be considered as science if it is based on critical inquiry and open to falsifiability and testability. Knowledge which is solely based on tradition or revelation or authority, without the possible contrast with reason and experience, or which is immune to any falsifiability or intersubjective verification, cannot be considered science.*” It seems to denote therefore that most of traditional knowledge would not be science.

A more nuanced language in **par. 7** could be proposed, for instance proposing explorations of hybrids between TK and Western science. For example, include in **par. 7** “*while recognizing that traditional knowledge and modern science have various interactions, such as the fact that traditional knowledge often provides key inputs for scientific research, and should therefore not be considered pseudoscience*”.

Similarly, the uses of the expressions “pseudoscience” (**par. 48**) and “pseudoscience-based” (**par. 56**) may be unclear in light of **par. 7**. It would be appropriate to better define what “pseudoscience” entails, highlighting that traditional knowledge is not “pseudoscience”.

5. *Indigenous Peoples, Genetic Resources and Science*

Moreover, also under the topic “*V. Special topics of broad application. D. Local and traditional knowledge. Indigenous peoples and science, par. 67-68*”, a possible suggestion would be to include reference to “free, prior, informed consent” as per the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP, 2007) and the International Labor Organization Convention 169 (1989).

Furthermore, for **par. 68**, on the issue of consultation of indigenous peoples, apart from the recognition of various forms of consent (in writing or not), the document could reinforce the rights of indigenous peoples and local communities to insert language on “*the possible uses of community protocols and other forms of real, significant engagement with indigenous peoples/local communities, rather than a formalistic acceptance/signature*”.

Par. 68 could also make reference to existing international instruments that regulate access and benefit sharing to traditional knowledge, in particular the Convention on Biological Diversity (1992) and the Nagoya Protocol on Access and Benefit Sharing (2010) with regards to genetic resources. This seems to be in line with the general approach of the text.

In **par. 83**, similar changes could be suggested. For instance, “*when negotiating international agreements or developing [excluded: adopting] their domestic intellectual property regime*”. It would be useful to better define what [sources and products of traditional knowledge are] “protected” means. One suggestion would be to refer rather to the “*goal of ensuring that traditional knowledge is not misappropriated.*”

Moreover, we could suggest adding that “*States should ensure that access and utilization to the traditional knowledge associated with genetic resources is in line with the international*

access and benefit sharing regime under the Convention on Biological Diversity (CBD) and the Nagoya Protocol on Access and Benefit Sharing, for States that are party". There are currently 123 countries party to the Nagoya Protocol.

Finally, we suggest referring to "*misappropriation*" rather than "*biopiracy*", as there is broader understanding on the former, in the ongoing deliberations in the CBD, World Trade Organization (WTO) and World Intellectual Property Organization (WIPO).

6. Technological Gap and Intellectual Property as barriers for the 4th Industrial Revolution

On "*V. G. Risks and promises of the so called 4th industrial revolution*", the concise and well-written section could be further strengthened through mentioning the issue of technological gaps and possible intellectual property and other monopoly-like barriers, in order to ensure that benefits to be accrued (promises) are not drastically limited (risks).