Empowered lives.
Resilient nations.

UNDP CONTRIBUTION TO THE UN COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS - General Discussion on a draft general comment 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

October 2018

The United Nations Development Program (UNDP) is pleased to submit a written contribution to the general discussion on a draft general comment 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.[1]

UNDP works in 170 countries and territories helping developing countries eradicate poverty and reduce inequalities and exclusion to achieve the 2030 Agenda for Sustainable Development. UNDP's Strategic Plan for 2018-2021 lays out the organization's vision on poverty, governance, resilience, environment, energy and gender equality.[2] UNDP's work on HIV, Health and Development is also informed by the UNDP HIV, Health and Development Strategy Note (2016-2021) that articulates UNDP's work on improving legal and policy environments, building human and institutional capacity and developing rights-based approaches to strengthen governance capacity of countries to respond more effectively to health and related development challenges.[3] As a founding cosponsor of the Joint UN Programme on HIV/AIDS (UNAIDS) and under the UNAIDS Division of Labour, UNDP convenes on human rights, stigma and discrimination and co-convenes on HIV prevention among key populations of men who have sex with men, migrants, sex workers, and transgender people (together with UNFPA), and investment and efficiency (together with the World Bank). [4]

The right to enjoy the benefits of scientific progress and its applications, including the latest scientific discoveries and technologies, is important to the UNDP's health and development work. For example, as partner of the Global Fund to fight AIDS, TB and Malaria, UNDP serves as the Principal Recipient in 18 countries and 3 regions covering 28 countries, including managing treatment programs in some of the most challenging operating environments.

[1] Background and questions for the October 2018 General Discussion during the 64th session of the UN Committee on Economic, Social and Cultural Rights https://www.ohchr.org/EN/HRBodies/CESCR/Pages/Discussion2018.aspx
[2] UNDP Strategic Plan 2018-2021 http://strategicplan.undp.org/
[3] UNDP Connecting the Dots: HIV, Health and Development Strategy Note 2016-2021 www.undp.org/content/undp/en/home/librarypage/hiv-aids/hiv--health-and-development-strategy-2016-2021.html
[4] UNDP, Issue Brief: Advancing Human Rights, Equality and Inclusive Governance to end AIDS http://www.undp.org/content/undp/en/home/librarypage/hiv-aids/issue-brief---advancing-human-rights--equality-and-inclusive-gov.html

Through the Global Health Innovative Technology (GHIT) Fund and the UNDP-led Access and the Delivery Partnership (ADP) initiatives, UNDP supports research and development (R&D) for new health technologies for tuberculosis (TB), malaria and neglected tropical diseases, as well as the strengthening of systems for health to facilitate the appropriate and timely introduction and use of health technologies in developing countries.

In response to the questions presented by the Committee, UNDP's contribution focuses on the following:

- UNDP welcomes the increased attention and further development of the right to enjoy the benefits of scientific progress and its applications. Addressing science through a human rights lens is novel, significant and imperative under the 2030 Agenda.[5] This general discussion comes at a critical juncture in the implementation of the Sustainable Development Goals (SDGs), including the target on universal health coverage (UHC). The right to science is essential to ensuring the health and development of all people.

- The persistence of global epidemics and health challenges like Ebola, antimicrobial resistance (AMR) and TB in large reflects decades of underfunding as well as the lack of a needs-driven approach to R&D, which has left patients and health systems reliant on outdated or nonexistent health technologies. When the market-based model for R&D promotes innovation, like in the fields of cancer or hepatitis, the cost of new health technologies can limit access, in both developing and developed countries.[6] The 2030 Agenda contains specific targets to increase both innovation and access to health technologies and to respond to specific diseases, requiring a more robust and equitable response to the right to enjoy the benefits of scientific progress.

- The right to science and the 2030 Agenda cannot be fulfilled without achieving a better balance between protecting moral and proprietary interests of inventors and addressing public health needs, stimulating competition and fostering innovation. Article 15 is a key nexus where balance and reform can be achieved by promoting the creation and dissemination of science and knowledge as global public goods.

- UNDP has served as the secretariat of two high-level independent expert bodies which analyzed the nexus between human rights, health, and development, and whose findings and recommendations can be of use to the Committee. The Global Commission on HIV and the Law carried out extensive consultations and produced evidence-informed, rights-based recommendations for effective responses to the HIV epidemic.[7] Since the release of the Commission's report in 2012, UNDP in partnership with Member States, UN entities and civil society has worked in 89 countries to support the implementation of the recommendations. In June 2018, the Commission launched a supplement that highlights developments in science, technology, law, geopolitics, and funding that affect people living with or at risk of HIV and its co-infections.[8] The supplement reiterates that laws and policies founded in science and human rights can help advance progress on HIV and its co-infections.

---

[5] Chapman and Wyndham, A Human Right to Science, Science *2013* June 14;340(6138):1291 http://science.sciencemag.org/content/340/6138/1291 and TAG submission to the UNHCHR on 2030 Agenda http://www.treatmentactiongroup.org/content/submission-office-united-nations-high-commissioner-human-rights-report-sustainable

[6] Progress report on access to hepatitis C treatment, WHO 2018 http://www.who.int/hepatitis/publications/hep-c-access-report-2018/en/; and Report of Informal Advisory Group on the Availability and Affordability of Cancer Medicines, WHO 2018 http://apps.who.int/iris/bitstream/handle/10665/272961/WHO-EMP-IAU-2018.04-eng.pdf

[7] Global Commission on HIV and the Law. Risks, Rights, and Health: Final Report, 2012 https://hivlawcommission.org

[8] Global Commission on HIV and the Law. Risks, Rights & Health: Supplement, 2018 https://hivlawcommission.org/supplement/

The supplement addresses the implications of the right to enjoy the benefits from scientific progress and contains several recommendations, including:

> *"Governments and other funders of biomedical R&D must urgently increase investments in R&D of new health technologies, including diagnostics, medicines and vaccines for HIV, TB and viral hepatitis. Governments and public funders of R&D must consider and implement alternative policies including tax incentives and prize awards to encourage R&D investment by the private sector in neglected diseases such as TB."*

- UNDP, with UNAIDS, served as the Secretariat to the UN Secretary General's High-Level Panel on Access to Medicines (UN High-Level Panel), which reviewed and assessed proposals and recommends solutions for remedying the policy incoherence between the justifiable rights of inventors, international human rights law, trade rules and public health in the context of health technologies. The UN High-Level Panel reviewed a background analysis on the justifiable rights of inventors in the context of the right to health and international legal frameworks.[9] The 2016 report of the UN High-Level Panel reiterates the need to increase access to medicines and other health technologies as part of governments human rights obligations, including removing barriers to access, and goes a step further by highlighting the gaps of the current biomedical R&D system. The report recommends a variety of interventions to ensure transparency and public return on the public investments in science and technology.[10]

- In response to question 34 on the General Comment 17[11], among others the UN High-Level Panel recommends:

> *"Governments must review the situation of access to health technologies in their countries in light of human rights principles and States' obligations to fulfil them, with assistance from the Office of the United Nations High Commissioner for Human Rights and other relevant UN entities. The results of these assessments should be made publicly available. Civil society should be financially supported to submit their own shadow reports on innovation and access to health technologies. Such national reviews should be repeated at regular intervals."*
>
> *"The UN Secretary-General should establish an independent review body tasked with assessing progress on health technology innovation and access. Challenges and progress on innovation and access to health technologies under the ambit of the Agenda 2030, as well as progress made in implementing the recommendations of this High-Level Panel, should be monitored by this body. Membership should comprise of governments, representatives from United Nations and multilateral organizations, civil society, academia and the private sector."*

---

[9] Richard Elliott, International Legal Norms: the Right to Health and the Justifiable Rights of Inventors, 2016 https://static1.squarespace.com/static/562094dee4b0d00c1a3ef761/t/56da14af4d088e1b940103a4/1457132721678/DRAFT+Background+Paper+B.pdf

[10] Report of the United Nations Secretary-General's High-Level Panel on Access to Medicines, Promoting Innovation and Access to Health Technologies, 2016 http://www.unsgaccessmeds.org/final-report/

[11] General Comment No. 17: 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 is the author (art. 15 (1) (c)) (CESCR, 2006) http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmlBEDzFEovLCuW1a0Szab0oXTdImnsJZZVQcMZjyZlUmZS43h49u0CNAuJIjwgfzCL8JQ1SHYTZH6jsZteqZOpBtECZh96hyNh%2F%2FHW6g3fYyiDXsSgaAmIP%2BP

- In response to questions 30, 31 and 32 on investment in science and technology, the report of the UN High-Level Panel contains a variety of recommendations to increase return on investment of publicly-funded research, including the reform or creation of new incentives for R&D of health technologies, as well as governance, accountability and transparency, including:

  "It is imperative that governments increase their current levels of investment in health technology innovation to address unmet needs"… "Stakeholders, including governments, the biomedical industry, institutional funders of healthcare and civil society, should test and implement new and additional models for financing and rewarding public health R&D, such as the transaction taxes and other innovative financing mechanisms."

  "Public funders of research must require that knowledge generated from such research be made freely and widely available through publication in peer-reviewed literature and seek broad, online public access to such research" … "Universities and research institutions that receive public funding should adopt policies and approaches that catalyse innovation and create flexible models of collaboration that advance biomedical research and generate knowledge for the benefit of the public."

- In alignment with the recommendations of the UN High-Level Panel, both the United Nations Political Declaration on Antimicrobial Resistance[12] and the recently adopted United Nations Political Declaration on Tuberculosis[13], contain commitments by Member States to promote new models for financing and incentivizing biomedical innovation. The goal is to ensure scientific development, dissemination of its benefits, as well as appropriate and affordable access.

- In response to question 35 on how can Member States ensure the right to freedom of research for substances strictly controlled under the drug conventions that have potential therapeutic value and the rights of citizens to enjoy the benefits of scientific advance for the case of controlled substances, the international drug control conventions establish a dual obligation: to ensure adequate availability of controlled substances for medical and scientific purposes while preventing their misuse.[14] The 1961 Single Convention on Narcotic Drugs lays out three minimum criteria that countries must observe in national regulations to dispense and distribute controlled substances. The 1971 Convention on Psychotropic Substances provides that access to psychotropic substances not be "unduly restricted." Many countries have regulations or enforcement practices that go beyond these requirements.[15] This has been shown to create obstacles to research into the medical benefits

[12] Political Declaration of the High-Level Meeting of the General Assembly on Antimicrobial Resistance, UNGA 2016 https://www.un.org/pga/71/wp-content/uploads/sites/40/2016/09/DGACM_GAEAD_ESCAB-AMR-Draft-Political-Declaration-1616108E.pdf

[13] Political Declaration of the High-Level Meeting of the General Assembly on Tuberculosis, UNGA 2018 https://www.un.org/pga/72/wp-content/uploads/sites/51/2018/07/TB.pdf

[14] International Narcotics Control Board. Availability of Opiates for Medical Needs: Report of the International Narcotics Control Board for 1995

[15] International Narcotics Control Board, Availability of Internationally Controlled Drugs: Ensuring Adequate Access for Medical and Scientific Purposes Indispensable, adequately available and not unduly restricted (INCB, 2016)

of controlled substances, infringing the right to benefit from scientific progress and its applications, freedom of inquiry indispensable for scientific research, and governments obligations to provide access to medicines.[16]

- UNDP recommends that governments: 1) review drug control regulations and enforcement practices to ensure that they do not unduly restrict the rights protected by article 15 (i.e., determined by law; compatible with the nature of the right and strictly necessary for the promotion of the general welfare in a general society); 2) remove overly restrictive regulations and practices; and 3) take measures to ensure that scientific research on controlled substances with potentially therapeutic value can be undertaken and communicated without censorship and free of political interference. UNDP is working with partners to develop and promote human right and development-sensitive responses to drug policies. In partnership with the International Centre on Human Rights and Drug Policy at the University of Essex and in collaboration with OHCHR, UNODC, WHO, government representatives, civil society, and academia, UNDP is working on the development of international guidelines on human rights and drug policy.[17]

In conclusion, to deliver the transformative science required to achieve the ambition and goals of the 2030 Agenda, biomedical R&D needs to improve as follows: 1) priorities should be public-health driven; 2) collaboration and sharing of data and knowledge should be facilitated and resources leveraged across sectors to increase the development and diffusion of science; and 3) full public return on the public investment should be promoted to ensure the right to enjoy the benefits of scientific advancement. The right to science provides a unique opportunity to address health, development and human rights challenges, including on the need to both promote innovation and access to health technologies. Policy incoherence must be addressed across sectors and the right to science allows for a more robust engagement of the scientific community and relevant ministers of science and technology in the reforms that are needed to achieve the 2030 Agenda and ensure that we deliver on the pledge to leave no one behind. UNDP remains committed and available to support the important work of this Committee and other interested stakeholders to promote the right to science in the context of the 2030 Agenda.

[16] Naomi Burke-Shyne et al., How Drug Control Policy and Practice Undermine Access to Controlled Medicines, Health and Human Rights Journal, vol. 19, no. 1 (June 2017)

[17] UNDP, Addressing the Development Dimensions of Drug Policy, 2015 http://www.undp.org/content/undp/en/home/librarypage/hiv-aids/addressing-the-development-dimensions-of-drug-policy.html; and UNDP, Reflections on Drug Policy and Its Impact on Human Development: Innovative Approaches, 2016 http://www.undp.org/content/dam/undp/library/HIV-AIDS/ReflectionsOnDrugPolicyAndImpactOnHumanDevelopment.pdf