

**ARTICLE 15(1) OF THE INTERNATIONAL COVENANT ON  
ECONOMIC, SOCIAL AND CULTURAL RIGHTS:  
RIGHT TO BENEFIT FROM SCIENTIFIC PROGRESS: WHAT  
ROLE SHOULD IT PLAY TO SECURE THE RIGHT TO  
FOOD?**

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**Article 15(1)**

Article 15(1) of the International Covenant on Economic, Social and Cultural Rights provides the only ‘direct’ entry point in the Covenant to consider the link between knowledge and human rights. Article 15 is *not* a provision that protects intellectual property rights as conceived under intellectual property rights law at the national or international level. This is confirmed by the analysis of the Constitutional Court in South Africa that specifically addressed the issue in the context of the drafting of the new Constitution in the mid-1990s. It determined that there is no universally accepted trend towards the protection of intellectual property rights in human rights instruments and bills of rights.<sup>1</sup>

Article 15(1) includes three sub-sections. These three sections *must* be read together because not doing so would imply giving more emphasis to one sub-paragraph. Article 15(1)(a) providing a right to take part in cultural life is relevant in the context of the right to food and the broader cultural context of food and agriculture. It is particularly relevant because it directly relates to the concept of farmers’ rights whose cultural component is high.

Article 15(1)(b) recognises a right which generally calls for free flows of knowledge. In the context of the right to food it mandates scientific and technological progress to be pursued in such a way that any advances over previous knowledge should be made available to foster food sovereignty from the local to the national level. This implies fostering the transfer of knowledge advances from laboratories to farmers’ fields.

Article 15(1)(c) establishes the need to recognise the contribution made by specific inventors (who can be either individuals or a group of individuals) to the development of knowledge. The current understanding of this provision as developed in General Comment 17

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<sup>1</sup> Paragraph 75, *Certification of the Constitution of the Republic of South Africa, 1996*, Constitutional Court of South Africa, Judgement of 6 September 1996, Case CCT 23/96.

includes both authors and inventors under this clause. This may not be the most appropriate interpretation of Article 15(1)(c) but is taken as the existing mainstream position at present.

Article 15(1) is a balanced provision that recognises the diverse interests involved in knowledge creation. On the one hand, it clearly puts forth the priority to be accorded to the diffusion of knowledge, a key premise for the eradication of food insecurity. On the other hand, it recognises that knowledge creation requires in certain cases some form of reward to ensure that individual/group contributors to the development of knowledge are rewarded by society for their contribution to something which – barring legal restrictions like intellectual property rights – can be used by everyone. Farmers who develop new seeds or new agricultural techniques can thus be entitled to a form of recognition for their efforts which are often undertaken without formal funding.

## **Article 15(1) role in the context of the right to food**

Article 15(1) has direct and indirect relevance in the context of the right to food.

- Article 15(1)(a) has an important contribution to make to the understanding of the right to food. Indeed, most of the food grown and eaten around the world is based on a certain number of cultural values and factors that influence what is eaten and grown. Among the many issues that Article 15(1)(a) raises, the introduction of genetically modified seeds and genetically modified organisms in food is one of the current policy challenges that directly links it to the right to food. Current debates over the introduction of genetically modified organisms in the food chain have strong cultural dimensions, whether in the European context or in countries like India where the first genetically modified food crop (Bt brinjal) has just been approved by the Genetic Engineering Approval Committee even though public protests have ensured that the Government will hold further consultations before taking a final decision.

- Article 15(1)(b) addresses issues linked to existing seeds or other technologies relevant in the agricultural production cycle. It proclaims that farmers (but all people eating food as well, in other word ‘everyone’) must have access to all technologies that can contribute to alleviate food insecurity whether in the existing climatic context or in unknown circumstances such as in the context of ongoing global warming. Article 15(1)(b) stems from the recognition that science and technology need to be used to ensure the realisation of all

human rights. This is important because the premise of Article 15(1) is access to existing knowledge.<sup>2</sup>

- Article 15(1)(c) is not an intellectual property rights clause. This is clear from the elements highlighted above as well as from the fact that intellectual property rights are of a different kind of rights. In the present era, intellectual property rights are time-bound rights that focus on the material rewards to an inventor. This does not coincide with the framework offered by human rights.<sup>3</sup> Article 15(1)(c)'s relevance in the context of the Article 15(1) and the right to food is thus different. The following remarks build on the existing understanding of Article 15(1)(c) as developed by the Committee in its General Comment 17 that includes both 'authors' and 'inventors' under its scope.

Article 15(1)(c) is significant because it recognises that certain incentives may need to be given for knowledge creation. It is also not bound by the framework of patent law that is extremely limited with regard to the scope of knowledge creation it rewards. Article 15(1)(c) is a provision which provides the basis for a fair reward to the individual author (not legal entities) that must be conceived in terms of moral reward and livelihood reward. It provides the basis for rewarding the 80 per cent of farmers in developing countries that save and replant their own seeds through careful selection to enhance yields and control pests and other issues.

Beyond seeds Article 15(1)(c) is also relevant for all knowledge-creation linked to the agriculture cycle (agricultural implements, for instance). The distinction between the kind of protection offered under Article 15(1)(c) and patent rights is relatively easy to make today because knowledge creation that can be rewarded by patents is nearly always done in the context of work for a legal entity (corporation, university, etc) while other knowledge creation that does not qualify for intellectual property rights protection is undertaken mostly by individuals.

- Article 15(1) can also play a role in securing the right to food insofar as a link can be made with farmers' rights. Farmers' rights as recognised under the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) constitute the

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<sup>2</sup> The intellectual property rights system starts from a different premise whereby the rights of the inventors/authors are at the centre of the system and this is simply counter-balanced by the recognition of the *interest* of society/everyone in accessing scientific knowledge.

acknowledgment that small and mostly subsistence farmers have been and remain the backbone of agriculture in most developing countries. Yet, the ITPGRFA does not grant farmers any 'rights' (despite the tag given). The only thing that the ITPGRFA does is to provide a framework within which 'real' farmers' rights can be recognised at the national level. A few countries like India have effectively introduced farmers' rights in legislation. The Indian Protection of Plant Varieties and Farmers' Rights Act, 2001 illustrates the trend which has been to fit farmers' rights in the context of intellectual property rights legislation concerning agriculture. This is problematic because it tends to restrict the conception of farmers' rights to a material recognition for their efforts at conserving and/or developing new varieties in keeping with the focus on intellectual property rights framework. Here, Article 15(1) can make a significant contribution in providing a framework for turning farmers' rights from a largely property rights orientation towards rights that recognise that contribution to knowledge development in this field is done for material gain as well as for a variety of other reasons. In other words, one can find farmers' rights aspects in all three sub-paragraphs of Article 15(1). Cultural aspects of seed/agriculture in paragraph (a), the need to ensure farmers have access to existing agriculture-related technological developments in paragraph (b) and the need to provide a moral reward to individuals/groups who make the effort to improve, for instance, plant varieties as well as a basic material reward (livelihood reward) that compensates these people for their labour (absolutely without any link to a 'monopoly' rent).

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<sup>3</sup> The fact that the European Court of Human Rights seems to find the slip from a 'right to property' to a 'right to intellectual property' conceptually easy to make is not material here because there is no right to property under the Covenant in the first place.