

# Inter-American Commission on Human Rights Hearing

## Right to Enjoy the Benefits of Scientific and Technological Progress

October 25, 2011

2:00-3:00pm

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### **Jorge Colón**

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## **Background**

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Article 14 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (1988) (Protocol of San Salvador) states as follows:

1. The States Parties to this Protocol recognize the right of everyone:
  - a. To take part in the cultural and artistic life of the community;
  - b. To enjoy the benefits of scientific and technological progress;
  - c. To benefit from the protection of moral and material interests deriving from any scientific, literary or artistic production of which he is the author.
2. The steps to be taken by the States Parties to this Protocol to ensure the full exercise of this right shall include those necessary for the conservation, development and dissemination of science, culture and art.
3. The States Parties to this Protocol undertake to respect the freedom indispensable for scientific research and creative activity.
4. The States Parties to this Protocol recognize the benefits to be derived from the encouragement and development of international cooperation and relations in the fields of science, arts and culture, and accordingly agree to foster greater international cooperation in these fields.

While the rights to culture and to the protection of moral and material interests of creators have both been considered in some depth by human rights monitoring mechanisms and practitioners, the right to enjoy the benefits of scientific and technological progress contained in Article 14(1)(b) and the related rights in Article 14(2), (3) and (4) remain neglected. These rights have not been defined, their relationship to other rights remains undetermined, barriers to the realization of these rights are unaddressed, and steps towards the implementation of these rights have not been identified. As a result, the right to enjoy the benefits of scientific and technological progress remains unrealized.

## Fundamental characteristics of the right

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**Focus on the rights of marginalized and vulnerable populations:** The right of everyone to enjoy the benefits of scientific and technological progress is an individual and a collective right. The realization of this right requires states to give particular focus to the needs of marginalized and vulnerable populations, including with regard to access to basic scientific and technological advances; research funding targeted to the specific needs of marginalized and impoverished communities; and protection of the rights of human research subjects.

**Participation in decision-making:** Dissemination of scientific information is essential to facilitating public participation in decision-making about science and to fostering further research and development. Underpinning both goals is the obligation on states to institute effective science curricula at all levels of the education system; to publicly disseminate scientific information; and to develop mechanisms for engaging the public in decision-making about funding and research priorities, as well as science policy, including as it relates to emerging areas of research and new technological applications.

**International cooperation:** Strengthening international cooperation and assistance in science and technology is vital to the realization of the right to enjoy the benefits of scientific and technological progress. International cooperation may take the form of direct aid, financial and/or material, as well as the development of international collaborative models of research, development and capacity-building, with a focus on mechanisms aimed to benefit developing countries and their populations.

**Protection from science and technology that violate human rights:** The right to ensure the benefits of scientific and technological progress includes a corresponding obligation to ensure against the use and/or misuse of science and technology in violation of human rights, including in the process of doing research, the products of scientific research, and the application of scientific and technological advances.

**Scientific freedom:** Scientific freedom is vital to the development of a robust and productive scientific community, requiring freedom of thought, to hold opinions without interference, and to seek, receive, and impart information and ideas of all kinds; the right of scientists to form and join professional societies and associations; and the freedom of the scientific community and its individual members to collaborate with others both within their own country and internationally, including the freedom to leave and re-enter their own country and the free exchange of information, research ideas and results.

## Issues for consideration

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**Scientific responsibility:** Scientific freedom is not absolute. Scientists are expected to conduct their research responsibly in accordance with ethical standards, standards which in practice are often developed and maintained by discipline-specific professional organizations and supported by legal and institutional mechanisms. These ethical standards and legal frameworks are rarely based explicitly on human rights standards. For the purposes of conceptualizing the right to benefit from scientific progress it is vital to determine the meaning of scientific responsibility from a human rights perspective.

**Right to benefit from science and intellectual property:** Clarification of the relationship between intellectual property protections and human rights is evolving. However, further consideration is still required to develop creative and effective mechanisms for protecting both the moral and material

interests of creators as well as the human rights of individuals and communities. Conceptualization of the right to enjoy the benefits of scientific and technological progress presents a vital opportunity to contribute further to these considerations.

***Right to benefit from science and national security:*** Export control regulations, travel restrictions, limitations on foreign contacts and information sharing, trade embargoes and sanctions, and similar barriers to international cooperation and research limit the freedom of scientists to conduct their work, and particularly to collaborate internationally and with international partners. The legitimate imposition and scope of such restrictions requires examination.

***Third party actors and obligations:*** Determining practical measures for applying the right to enjoy the benefits of scientific and technological progress, and determining how to do so in a way consistent with the general principles of human rights, poses unique challenges given the significant and increasing role of the private sector in research and development. In countries where the government's role in identifying priority research areas, undertaking research, and disseminating the products of research has been reduced, the private sector's influence has increased.

## **Going Forward**

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In April 2010, the Board of Directors of the American Association for the Advancement of Science adopted a Statement "On the right to the Benefits of Scientific Progress" (See Appendix). Our suggestions for going forward have their foundation in this Statement:

1. Acknowledge in the course of Commission activities, including hearings, missions and report development, that realization of the human right to enjoy the benefits of scientific and technological progress is an obligation of states party to the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (1988).
2. Publish a thematic report on the right to enjoy the benefits of scientific and technological progress and its related rights under Article 14, including an analysis of barriers to its realization in the Americas, practical steps towards its implementation and examples of positive state action in the realization of the right.
3. Recognize that central tenets of the right include: (1) ensuring equitable access to the benefits of scientific progress, with particular focus on vulnerable and marginalized groups; (2) investing in research and development, and creating incentives for innovation to address forms of suffering experienced by these groups; (3) ensuring the freedom of scientists to engage in scientific inquiry while also conducting their work responsibly; and (4) fostering international cooperation in science.
4. Bring the perspective of the Commission to bear on an international process that is currently underway to define with greater clarity the meaning of the right and to determine how best to implement the right in practice.
5. Engage the Inter-American Court on Human Rights in the process of defining the meaning and determining steps for the application of the right to enjoy the benefits of scientific and technological progress.
6. Collaborate with regional scientific and engineering communities in the process of defining and implementing the right.

## Speaker biographies

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### **Jorge Colón, Ph.D.**

Dr. Colón is President of the American Association for the Advancement of Science (AAAS) Caribbean Division and Chemistry and the Universidad de Puerto Rico, Río Piedras. Dr. Colón is also a member of the UNESCO Chair for Peace Education at the Universidad de Puerto Rico, a position he has held since 2004. He has served as President of the Puerto Rico Section of the American Chemical Society and as President of the Puerto Rican Association of University Professors. In 2010, as part of his functions as President of the AAAS Caribbean Division, Dr. Colón organized a forum on the right to enjoy the benefits of scientific and technological progress and its applications in the Americas. Dr. Colón is currently engaged in a project to promote science and science education as vital to Haiti's post-earthquake recovery. He is co-author of a report titled *Science for Haiti: A Report on Advancing Haitian Science and Science Education Capacity* (AAAS, 2011). Dr. Colón holds a Bachelor of Science in chemistry from the Universidad de Puerto Rico, and a Ph.D. in analytical chemistry from Texas A&M University.

### **Mark S. Frankel, Ph.D.**

Dr. Frankel is director of the AAAS Scientific Responsibility, Human Rights and Law Program, where he develops and manages AAAS's activities related to the ethical, human rights and legal aspects of science and technology. At AAAS he has directed or co-directed projects on research integrity, codes of ethics in scientific and engineering societies, the ethical and policy implications of human stem cell research, the implications of advances in neuroscience research for the legal system, among others. Dr. Frankel is a former member of the Board of Directors of the National Patient Safety Foundation and currently serves on the Boards of the Food and Drug Law Institute and the Center for Law, Science & Innovation at Arizona State University. He is also a member of the Science and Ethics Advisory Group at Roche Genetics in Basel, Switzerland. He serves on the editorial boards of *Science and Engineering Ethics*, *Ethics & Behavior*, and the *Journal of Empirical Research on Human Research Ethics*. He is editor of AAAS's quarterly publication, *Professional Ethics Report*, and a Fellow of AAAS.

### **Jessica Wyndham**

Jessica Wyndham is Associate Program Director of the AAAS Scientific Responsibility, Human Rights and Law Program where she directs the "Article 15" project, aimed at engaging the scientific community in elucidating, promoting and assisting in the realization of the human right to enjoy the benefits of scientific progress. Jessica manages the Program's "On-call" Scientists initiative that brings volunteer scientists and engineers together with human rights organizations in need of technical expertise. She is also Coordinator of the AAAS Science and Human Rights Coalition. Jessica has worked extensively with national human rights institutions throughout Asia, the Pacific, Africa and the Americas. She has served as Legal Adviser for the UN Office of the High Commissioner for Human Rights in Ecuador and is currently a consultant to the UN Independent Expert in the field of cultural rights. Jessica is also currently an Adjunct Professor at George Washington University where she teaches a graduate course on internal displacement. Jessica holds a Bachelor of Arts (with Honors), a Bachelor of Laws (with Honors) (J.D. equivalent) and a Master of Laws.



## ***AAAS Statement***

### ***On the human right to the benefits of scientific progress***

The human right to enjoy the benefits of scientific progress and its applications was first internationally recognized in the 1948 Universal Declaration of Human Rights. Basic tenets of the right include: ensuring equitable access to the benefits of scientific progress, with particular focus on vulnerable and marginalized groups; investing in R&D and creating incentives for innovation to address forms of suffering experienced by these groups; ensuring the freedom of scientists to engage in scientific inquiry while also conducting their work responsibly; and fostering international cooperation in science.

An international process is currently underway that will take into account different perspectives and diverse interests in defining with greater clarity the meaning of the right and in determining how best to implement the right in practice. Recognizing that this right lies at the heart of the AAAS mission and the social responsibilities of scientists, AAAS will pursue opportunities to collaborate with the global scientific community so that the voice, interests and concerns of scientists can be brought to this process.

Building on AAAS's strength as the world's largest multi-disciplinary scientific society and its unique contributions in bringing science and scientists to human rights work, AAAS will:

- bring to the attention of its affiliates and members the importance of engaging in discussions concerning the human right to benefit from scientific progress and its applications;
- engage the domestic and global scientific communities in defining the content of the right and determining its application to a diverse range of scientific disciplines and issues of concern to the scientific community;
- coordinate the efforts of the AAAS Science and Human Rights Coalition to conceptualize the right and pursue strategies for integrating this right into the work of Coalition members; and
- building on these activities, engage the US government and other key actors in dialogue on the right to benefit from science and its implications for relevant policies and programs.

*[Adopted by the AAAS Board of Directors, 16 April 2010.]*