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**REPORT ON THE FOURTH MEETING OF THE  
JOINT EXPERT GROUP UNESCO (CR)/ECOSOC (CESCR)  
ON THE MONITORING OF THE RIGHT TO EDUCATION (2006)**

**SUMMARY**

The Joint Expert Group UNESCO (CR)/ECOSOC (CESCR) on the Monitoring of the Right to Education held its fourth meeting at Palais des Nations, Geneva, on 12-13 May 2006. The meeting focused on the justiciability of the right to education. Pursuant to 172 EX/Decision 26, this document contains the Report on the Fourth Meeting of the Joint Expert Group.

Taking into account the suggestions and recommendations put forth in the Report, the Committee on Conventions and Recommendations may wish to provide further guidance to the Joint Expert Group with regard to its future work.

Decision proposed: paragraph 16.

1. The Joint Expert Group UNESCO (CR)/ECOSOC (CESCR) on the Monitoring of the Right to Education<sup>1</sup> held its fourth meeting on 12 and 13 May 2006 at the Palais des Nations, Geneva, during the 36th session of the United Nations Committee on Economic, Social and Cultural Rights (CESCR). Opening the meeting, Professor Virginia B. Dandan, Chairperson of CESCR extended a

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<sup>1</sup> The Joint Expert Group, established by Decision 5.4 adopted by UNESCO's Executive Board at its 162nd session in October 2001, is at present composed of four members: Ms Virginia B. Dandan, Chairperson and Mr Eibe Riedel, Vice-Chairperson of the United Nations Committee on Economic, Social and Cultural Rights (CESCR), and Mr Olabiyi B. J. Yai and Mr José Duarte Ramalho Ortigao, members of UNESCO's Committee on Conventions and Recommendations (CR). Ambassador Ortigao was unable to attend the meeting. Mr A. Yusuf, Director of UNESCO's Office of International Standards and Legal Affairs, Mrs Ingeborg Breines, Director, UNESCO Liaison Office, Geneva, Ms Wan-Hea Lee and Mr Jacob Schneider, Secretariat of CESCR, and Mr Kishore Singh, Secretary of the Joint Expert Group, participated in the meeting.

very warm welcome to Ambassador Olabiyi B. J. Yai, member of the Joint Expert Group from UNESCO's Committee on Conventions and Recommendations (CR), and to other participants from UNESCO. She stressed the importance accorded to the Joint Expert Group in the work of CESCR and collaboration with UNESCO in promoting the right to education. Ambassador Yai chaired the meeting. In his introductory statement, he underlined the significance of giving effect to the right to education, which is at the heart of UNESCO's mandate and critical in achieving Education for All (EFA).

2. The concept paper on the Justiciability of the Right to Education (Annex), prepared by the Secretariat for the meeting served as the basis for discussion. Professor Riedel briefly explained that the term justiciability refers to the possibility for individuals to invoke a right before a national or international judicial or quasi-judicial body. While no judicial or quasi-judicial procedure for invoking economic, social and cultural rights exists at the universal level, pending the adoption of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, regional mechanisms already provide for such a possibility. If the newly created Human Rights Council were to vest the open-ended working group of the former Commission on Human Rights to consider options regarding the elaboration of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights with a mandate to draft an Optional Protocol, such Optional Protocol could be drafted. Its aim would be to enable individuals to claim the justiciable elements of the rights recognized in the International Covenant, including the right to education.

3. CESCR has identified such justiciable elements in its General Comments on a number of rights, including the right to education, recognized in the International Covenant and, to a certain extent, in its concluding observations on periodic reports submitted by States Parties to the Covenant. The complaint procedure established by an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights would be of a quasi-judicial character, as the organ supervising such a procedure, e.g. CESCR, would not display all characteristics of a tribunal, since the views of this organ on individual complaints would be recommendations rather than legally binding decisions.

4. The discussion covered the provisions contained in the Guidelines for the seventh consultation of Member States on the Implementation of the Convention and the Recommendation against Discrimination in Education (1960) approved by the Executive Board in April 2005. UNESCO will share with CESCR reports received from Member States on the seventh consultation and the results of their examination by the CR. In the dialogue with the members of CESCR, Ambassador Yai apprised them of the main areas discussed by the Joint Expert Group. Mr A. Yusuf, Director of UNESCO's Office of International Standards and Legal Affairs, provided information and explanations with respect to UNESCO's complaints procedures. He presented an overview of the communications examined by the CR concerning the cases and questions of alleged violations of human rights within UNESCO's fields of competence, especially the cases relating directly to the right to education and settled so far.

5. The Joint Expert Group suggested that it would be very useful to elaborate a document on the justicability of the right to education for making the judicial and quasi-judicial systems and procedures for the enforcement of the right to education better known.

6. Recalling their previous recommendation, the experts reiterated the need for an operational definition of basic education. Such a definition should lay down legal parameters of basic education and internationally agreed minimum standards, with which all Member States should comply. This would greatly facilitate the task of both CESCR and UNESCO in monitoring the progress realized in achieving the right to basic education and the EFA goals.

7. The Joint Expert Group strongly recommended UNESCO to:

- Take the necessary steps with a view to the elaboration of an operational definition of basic education so that progress could be monitored on the basis of agreed legal parameters in order to ensure that the United Nations system uses the same language.

8. Policy and research questions were the main thrust of discussions on the enforcement and justiciability of the right to education. The Joint Expert Group gave consideration to the Global Action Plan for EFA. The vision for basic education should embrace the right to education as central to the EFA agenda. As regards inter-agency cooperation for EFA, the contribution made by the meeting on the Right to Education and the Follow-up to the World Education Forum, organized by CESCR in cooperation with UNESCO on 14 May 2002, was noteworthy. The decision taken by UNESCO's Executive Board in April 2005 recognizing the Convention against Discrimination in Education as the key pillar of EFA and the recommendations of the High Level Group on EFA pertaining to developing national legislation on EFA are also very significant. The Joint Expert Group noted that adequate attention has not been given to the right to education in the Global Action Plan for EFA. It also noted that the EFA Global Monitoring Report has so far not been devoted to the Right to Education as a theme. The process of implementation of the Global Action Plan for EFA is opportune for taking necessary steps. The Joint Expert Group recommended that it was very important to:

- Accord due place to the right to education in the implementation of the Global Action Plan for EFA;
- Make “the right to education” the theme of an EFA Global Monitoring Report.

9. The experts discussed questions relating to the obligations of States for providing universal free primary education and the effective enforcement of the right to basic education. They referred to General Comment 11 on Article 14 of the International Covenant which already provides a normative basis for national plans for EFA and their evaluation. Concern was expressed that in spite of State obligations under UNESCO's Convention against Discrimination in Education as well as under the International Covenant (Articles 13 and 14), and the commitment undertaken at the World Education Forum, in some countries, especially in Africa, primary/basic education is not free and universal. This hampers the enjoyment by many poor children, not least girls, of the right to basic education. The World Bank/UNICEF School Fee Abolition Initiative and UNESCO's participation in it was mentioned with a view to the normative action of the Organization. It was considered opportune if the concerned international agencies as well as country-level decision-makers and high-level experts could be brought together to discuss, on the basis of evidence-based research, as well as in-depth case studies covering a number of countries from all the regions with diversity of situations, all the issues involved.

10. The Joint Expert Group suggested that:

- In collaboration with the OHCHR, UNESCO should organize a workshop or seminar for all the stakeholders, including the World Bank and the International Monetary Fund and other EFA partners along with country specialists and international experts. Such a workshop would examine the long-term impact of structural adjustments in African countries on the core obligation of States for providing basic education as a fundamental human right. It could be organized during 2007 on the occasion of a session of CESCR or meeting of the Working Group on EFA;

- Such a workshop or seminar should provide concrete results for action to abolish school fees for primary/basic education that are imposed. These should be reported to the meeting of the High Level Group on EFA in 2007.

11. The experts also discussed research questions, with a focus on the need for a comparative analysis of provisions in constitutions, legislation and policy plans on the right to basic education. The discussions related to the legal system for its financing. They considered it highly important to support the National Commissions for UNESCO to collaborate with the Organization in this respect. In this context, they were apprised of the discussions in the Executive Board at its 174th session on the follow-up to the *Jakarta Declaration*, adopted at the International Conference on *The Right to Basic Education as a Fundamental Human Right and the Legal Framework for its Financing*, December 2005. UNESCO's current activities relating to the foundations of the right to education in national legal systems and technical assistance being provided deserve greater support. Issues in providing education in the mother tongue, or bilingual and bicultural education in order to reach linguistic and cultural minorities also need to be examined, bearing in mind recent discussion in the UNESCO International Bureau of Education (IBE) and decision on such questions.

12. The experts considered it important for UNESCO:

- to promote research and studies on the right to education – its bases in constitutional law and national legislation as well as norms and standards regarding the legal framework for financing basic education;
- to reinforce UNESCO's ongoing collaboration with the intellectual community and professional bodies at national, regional and international levels, and especially with the National Commissions for UNESCO which could take on an active role.

13. Professor Riedel shared with the other members of the Joint Expert Group a study in progress on the Right to Education, EFA and national decision-makers. In view of its significance, the Joint Expert Group suggested that once finalized, this should be disseminated as a publication. It is important to continue to sensitize law-makers and parliamentarians on the right to education and to stress the need for its advocacy for advancing EFA.

14. The Joint Expert Group expressed the need for holding more frequent meetings so as to address specific themes and dimensions of the right to education. It was deemed necessary to give greater visibility to its work, and to the role of UNESCO in promoting the right to education as part of the EFA process.

15. It was decided that the report by the Joint Expert Group would be presented to CESCR by its Chairperson, Professor Dandan to CESCR; and to CR by Ambassador Yai, and then to UNESCO's Executive Board. The next meeting of the Joint Expert Group should be organized in November 2006 at UNESCO Headquarters. While concluding the meeting, the experts expressed their thanks to the Secretariat, and in particular to Mr Kishore Singh, for the excellent work done in preparing the meeting.

**Proposed draft decision**

16. After having examined the Report by the Joint Expert Group UNESCO (CR)/ECOSOC (CESCR) on the Monitoring of the Right to Education, the CR may like to recommend to the Executive Board the following draft decision:

The Executive Board,

1. Recalling 172 EX/Decision 26,
2. Having examined document 175 EX/28,
3. Expresses its appreciation of the work of the Joint Expert Group;
4. Commends the activities of the Secretariat in promoting the right to education;
5. Recommends to the Director-General to give enhanced consideration to the right to education in the implementation of the Global Action Plan for EFA;
6. Requests the Director-General to take appropriate action as a follow-up to the recommendations made by the Joint Expert Group;
7. Encourages the Joint Expert Group to continue its work on the issues of key importance for the realization of the right to education, and requests it to report to the Executive Board at its 177th session.

ANNEX



**Economic and Social  
Council**

JOINT EXPERT GROUP  
UNESCO (CR)/ECOSOC (CESCR)  
ON THE MONITORING OF  
THE RIGHT TO EDUCATION

Fourth Meeting

*12-13 May, 2006*

Palais des Nations,

Geneva

**Justiciability of the Right to Education**

*Concept Paper*

## **Introduction: Justiciability and Enforcement of the Right to Education**

1. The right to education is an internationally recognized right. The Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (1966) as well as UNESCO's *Convention against Discrimination in Education* (1960) provide for this right comprehensively and lay down the State obligations. As the General Comment 13 on the Right to Education (Article 13 of the International Covenant on Economic, Social and Cultural Rights)<sup>1</sup> states, the right to education, like all human rights, imposes three levels of obligations on States parties: the obligations to respect, protect and fulfill. In turn, the obligation to fulfill incorporates both an obligation to facilitate and an obligation to provide. The State obligation remains even in case of privatization of education. The States are duty bound to incorporate their treaty obligations into domestic legal order, and to effectively enforce the right to education. Individuals as beneficiaries of the right to education must be able to have legal recourse in the eventuality in which their right is violated.

2. Enforceability of the right to education thus primarily depends upon national legal system. The judicial system has an essential role in upholding the right to education as an entitlement. Effective enforcement mechanisms are needed to ensure that States comply with their minimum core obligations for making basic education accessible to all. States must be encouraged to consider how international and national jurisprudence have demonstrated that the right to education is not an ideal or aspiration, but a legally enforceable entitlement. Justiciability of the right to education should be acknowledged and reaffirmed.

3. When the right established for the individual's benefit forms part of a convention that is properly ratified and incorporated into a State's internal order, thereby rendering it legally binding on that State, the individual as its beneficiary can use every available legal means to secure compliance: recourse to law courts, for instance, where the judge ultimately has the power to examine whether there is a breach of the States' legal obligations, and to come to a decision. Technically speaking, of course, individuals do not necessarily have to take such action themselves: groups enjoying legal status and with a stake in the matter (unions, public service users' or parents' associations, etc.) may take such action on behalf of their members. Furthermore, general international law – irrespective of whatever specific mechanisms any particular instrument may have additionally established to ensure compliance – provides similar means of sanctioning the right to education internationally within the realm of inter-State relations.

4. The Joint Expert Group UNESCO (CR)/ECOSOC (CESCR) on the Monitoring of the Right to Education has shown abiding concern with the enforcement of the right to education. The discussions in its first meeting, organized at UNESCO Headquarters on 19 May 2003, showed that “it was crucial to emphasize the importance of incorporation of the State obligations on the right to education into national legal systems and to project it as being justiciable for promoting its enforcement.”

5. During its Third Meeting, organized at UNESCO Headquarters on 2 May 2005, the Joint Expert Group discussed questions related to the enforcement of the right to education. In this context, reference was made to the recent case law in South Africa and in India with respect to the obligation of providing universal free primary education. Larger areas such as the *rights in education* and the *right to education* also figured in the discussions. The Joint Expert Group deemed it necessary to address the question of justiciability of the right to education as a priority

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<sup>1</sup> General Comment 13 on the Right to Education (Article 13 of the Covenant), adopted by the Committee on Economic, Social and Cultural Rights at its twenty-first session in 1999. E/C.12/1999/10, 2 December 1999 (para. 1).

concern. “This would be very relevant in the context of elaboration of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (...)”.

#### **A. CESCR: Human Rights Perspective**

6. As the General Comment 13 on Article 13 of the International Covenant (Right to Education), mentioned above, states, the right to education is both a “human right in itself and an indispensable means of realizing other human rights”.<sup>2</sup> The right to education is thus an overarching right among economic, social and cultural rights.

##### *(i) Considerations Pertaining to the Justiciability of the Right to Education in Monitoring the Implementation of Economic, Social and Cultural Rights*

7. CESCR monitors the implementation of the rights provided for in International Covenant on Economic, Social and Cultural Rights. The issues as regards enforcement of the right to education and its justiciability are addressed by CESCR in the dialogue it maintains with the States parties to the International Covenant with respect to the progress realized in the implementation of economic, social and cultural rights. The Concluding Observations CESCR adopts after examining the reports submitted by the States parties to the International Covenant reflect various issues as regards the enforcement of the right to education and its justiciability. These Concluding Observations are disseminated by UNESCO for follow up.<sup>3</sup>

8. High importance attached by CESCR to the Right to Education was brought into focus during the Day of Discussion on the Right to Education and the Follow up to the World Education Forum, organized by CESCR in co-operation with UNESCO in May 2002. The Discussion enabled to explore the ways and means of linking more closely the Dakar Framework for Action, adopted at the World Education Forum in 2000, with the international instruments relating to the right to education, especially the provisions of articles 13 and 14 of the International Covenant. It underlined the importance of how the State obligations relating to the right to education under the International Covenant as well as under the Dakar Framework for Action should be reflected in national legal systems and how the constitutional and legislative bases of the right to education should be reinforced.<sup>4</sup>

##### *(ii) Elaboration of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and Considerations Pertaining to the Justiciability of the Right to Education*

9. No judicial or quasi-judicial procedure for invoking economic, social and cultural rights exists at the universal level. As such, the Commission on Human Rights by its Resolution 2001/30, adopted at its 30th session in 2001, designated an Independent Expert to examine the question of the elaboration of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. On the basis of the Report submitted in February 2002,<sup>5</sup> an Open-ended Working Group to consider options regarding the elaboration of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights was created. As the latest report by Catarina de

<sup>2</sup> General Comment 13 on the Right to Education (Article 13 of the Covenant), op. cit. (para. 1).

<sup>3</sup> As regards the concerns of CESCR reflected in these Concluding Observations with respect to the justiciability of economic, social and cultural rights, see *Enseignement primaire et gratuité*, UNESCO and OIDEL, Paris, 2006 (pp. 166-237).

<sup>4</sup> It was pointed out during the discussion that in order to implement its responsibilities under the Dakar Framework for Action, the most important measure that could be taken by a State was to introduce a constitutional provision on the right to education. Another solution would be to introduce appropriate legislation. The advantages of having a constitutional provision were that a parameter would be set by which the State's legislation and policies could be measured, and that any violations could be brought before a constitutional court.

<sup>5</sup> Document E/CN.4/2002/57, 12 February 2002.



Albuquerque, Chairperson-Rapporteur of the open-ended Working Group on its third session (2006)<sup>6</sup> shows, questions related to the communications procedure for examining individual complaints of violations of the rights recognized in the International Covenant were examined by the Working Group. The discussions covered the right to education, guaranteed by the article 13 of the International Covenant. UNESCO's communications and complaints procedure regarding the protection of human rights within the field of the competence of the Organization was also mentioned. CESCR has discussed on several occasions questions relating to the draft Optional Protocol to the International Covenant. If the newly created Human Rights Council were to entrust the open-ended Working Group of the former Commission on Human Rights with the renewed mandate to continue its work and elaborate an Optional Protocol, such an Optional Protocol could be drafted. Its adoption would enable individuals as right-holders to claim the justiciable elements of the rights recognized in the International Covenant, including the right to education.

## **B. UNESCO: Educational Perspective:**

10. A number of standard-setting instruments adopted by UNESCO in the field of education develop the right to education in its various dimensions, among which the *Convention against Discrimination in Education* occupies the foremost place. Owing to increasing recognition of the centrality of education in people's lives, the right to education is considered to be of key importance. Whereas the United Nations and the CESCR take a human-rights perspective as regards the justiciability of the right to education, that is, the right to education as part of the economic, social and cultural rights, UNESCO takes an educational perspective, that is, focus on the Education for All (EFA) as UNESCO's high priority. UNESCO recognizes that providing the right to education is an obligation of governments and requires that they translate their international commitments into legislation against which their citizens have legal recourse. Without legislation, it is difficult to monitor and enforce obligations, so mobilizing governments to develop and modernize national legislation is a critical element of implementing the right to education. "Where the right to education is guaranteed, people's access to and enjoyment of other rights is enhanced".<sup>7</sup>

### *(i) Considerations Pertaining to the Justiciability of the Right to Education in UNESCO's Communications and Complaints Procedures on Human Rights Violations*

11. UNESCO's system of protecting human rights violations contributes to the enforcement of these rights within the field of its competence. Pursuant to 104 EX/Decision 3.3, adopted by UNESCO's Executive Board in 1978 at its 104th session, the Committee on Conventions and Recommendations (CR) which is a subsidiary organ of the Executive Board considers the communications received by UNESCO concerning cases and questions of alleged violations of human rights within UNESCO's fields of competence. As a result, CR examines all such communications received by the Organization. The Director-General plays an important role in seeking continually to strengthen the action of UNESCO in the promotion of human rights, both through the settlement of cases and the elimination of massive, systematic or flagrant violations of human rights and fundamental freedoms. Consultations are initiated in conditions of mutual respect, confidence and confidentiality to help reach solutions to particular problems concerning human rights. UNESCO acts in a spirit of international co-operation, conciliation and mutual understanding since the complaints on human rights violations can be directed against any Member State; hence the confidentiality of this procedure.

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<sup>6</sup> Report of the open-ended working group to consider options regarding the elaboration of an optional protocol to the International Covenant on Economic, Social and Cultural Rights on its third session, Document E/CN.4/2006/47, 14 March 2006.

<sup>7</sup> EFA Global Monitoring Report 2002, *Education for All: Is the World on Track ?*, UNESCO Publishing 2002. (pp. 14 and 30).

12. From 1978 to September 2005, 529 communications were considered by the CR, out of which, 330 communications were settled. These could be categorised as follows:

- 205 cases were released or acquitted;
- 55 cases were authorized to leave the State concerned to study or to teach;
- 29 cases were able to resume their employment or activity;
- 14 cases were able to resume a banned publication or broadcast programme;
- 10 cases were able to benefit from changes in certain education laws which were discriminatory towards ethnic or religious minorities; 14 cases were able to resume their education;
- 14 cases were able to resume their education.

Thus, out of total of 330 communications settled, 24 cases directly relate to the right to education.

13. As regards the results concerning alleged victims (or groups of alleged victims),<sup>8</sup> there is clearly need for disseminating UNESCO's communications and complaints procedure more widely, and to encourage human rights defenders and activists to make greater use of avenues open at UNESCO and in the United Nations system. At the same time, human rights advocacy and ratification campaign with respect to the *Convention against Discrimination in Education* and the International Covenant requires to be stepped up. Besides, empirical research to look at the application of the right to education is a matter of critical importance as in today's knowledge societies, millions of children and adults remain deprived of educational opportunities.

14. Therefore, it is important to consider questions in relation to UNESCO's complaints procedures for the protection of the right to education, bearing in mind the elaboration of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

15. In this respect, the *Conciliation and Good Offices Commission to be responsible for seeking the settlement of any dispute which might arise between States Parties to the Convention*<sup>9</sup> may eventually have a role to play. The Commission consists of 11 members elected by the General Conference from a list of persons nominated by the States Parties to the Protocol. The mandate of the Commission consists, essentially, in ascertaining the facts and making available its good offices and conciliating functions, including possible recommendations, to the States concerned with a view to an amicable solution of the matter on the basis of respect for the Convention. Until today, the Commission has never been called upon to use its good offices or exercise its conciliatory functions. However, in order to revitalize and develop the procedure instituted by the Protocol, a meeting of the States Parties to the Protocol, convened at UNESCO's Headquarters in October 2003 during the 32nd session of the General Conference, reviewed the Commission's procedures with the

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<sup>8</sup> Committee on Conventions and Recommendations, Information Document, UNESCO Executive Board, 159th session, (159 EX/CR/2), UNESCO Paris (§ V.).

<sup>9</sup> Article 8 of the Convention against Discrimination in Education which in its states that "Any dispute which may arise between any two or more States Parties to this Convention concerning the interpretation or application of this Convention, which is not settled by negotiation shall at the request of the parties to the dispute be referred, failing other means of settling the dispute, to the International Court of Justice for decision". The General Conference, at its 12th session, adopted on 10 December 1962 a Protocol instituting a *Conciliation and Good Offices Commission to be responsible for seeking the settlement of any dispute which might arise between States Parties to the Convention*.

aim of making them effective and decided to interpret specific articles of the Protocol to enable the Commission to fulfil its functions.<sup>10</sup>

(ii) *Considerations Pertaining to the Justiciability of the Right to Education in the Implementation of Conventions and Recommendations in the Field of Education*

16. Recognizing the State obligations in reporting as provided for in UNESCO's constitution,<sup>11</sup> importance is attached to the constitutional and legislative bases of the right to education and its justiciability in the consultation of Member States on the Implementation of the Convention and the Recommendation against Discrimination in Education (1960). UNESCO has recently launched the Seventh consultation of Member States, covering a six-year (2000-2005) period and Member States are required to submit to the Organization Reports on the measures taken for the implementation of the Convention and the Recommendation, to be prepared on the basis of the Guidelines approved by the Executive Board for this purpose.<sup>12</sup> In elaborating these Guidelines, relevant Guidelines of the United Nations system, especially those of the United Nations Committee on Economic, Social and Cultural Rights (CESCR) have been taken into consideration. These Guidelines contain several provisions relating to the enforcement and justiciability of the right to education. The States Parties to the *Convention against Discrimination in Education* are requested to "describe (i) whether the Convention is directly applicable in domestic law on ratification, or has been incorporated into the national Constitution or domestic law so as to be directly applicable; whether the provisions of the Convention are guaranteed in the Constitution or other laws; and (ii) whether its provisions can be invoked before and given effect to by courts, tribunals and administrative authorities. Information should be given about the judicial, administrative and other competent authorities having jurisdiction with respect to the implementation of the provisions of the Convention. Please illustrate on the basis of available case law and jurisprudence. The practical availability, effect and implementation of remedies for violation of provisions of the Convention should be explained and exemplified. The Report should contain sufficient quotations from or summaries of the relevant principal constitutional, legislative and other texts, which guarantee and provide remedies in relation to Convention rights". (para. 5). These Guidelines further provide: "If your country is a State Party to the International Covenant on Economic, Social and Cultural Rights, you may attach information already provided to CESCR (covering the reporting period 2000-2005) with respect to the implementation of the right to education (Articles 13 and 14 of the International Covenant) or refer to the relevant parts of those reports, rather than repeat the information here". (para. 15).

17. Further consideration is required to be given to as regards the steps to be taken with a view to facilitate integrating the reporting obligations of the States Parties to the Convention and those of the States Parties to the International Covenant on Economic, Social and Cultural Rights (Articles 13 and 14 on the right to education) and reducing the state burden in reporting.

**Awareness-Raising, Research and Studies on the Justiciability and Enforcement of the Right to Education, and Collaboration with the Intellectual Community**

18. The questions related to institutional mechanisms, judicial and quasi-judicial systems for enforcing the right to education need to be addressed in a broader perspective. Promoting research

<sup>10</sup> See Record of the Meeting of the States parties to the Protocol, Paris 7 and 8 October 2003.

<sup>11</sup> UNESCO's Constitution provides that "Each Member State shall submit to the Organization, at such time and in such manner as shall be determined by the General Conference, reports on laws, regulations and statistics relating to its educational, scientific and cultural institutions and activities, and on the action taken upon the recommendations and conventions (...)" (article VIII).

<sup>12</sup> Guidelines for the Preparation of Reports on the Implementation of the Convention against Discrimination in Education (1960)/Recommendation against Discrimination in Education (1960), approved by the Executive Board at its 171 session in April 2005 (171 EX/Decision 28).

and studies on constitutional law and the right to education – case law and available jurisprudence – is essential. Exchange of practical examples and experience available for promoting the justiciability of the right to education would be highly important.

19. As mentioned above, the recourse to legal as well as political processes can enable the beneficiaries of the right to education to seek its effective enforcement. Such recourse is possible only if these beneficiaries are conversant with the legal processes and ways and means of seeking remedies in case of the violation of the right to education as a fundamental human right. For this purpose, they must be able to receive minimum basic education which empowers them to do so. If an individual is not aware of these legal processes and can not have recourse to them, he or she will not be able to seek remedies in case of violation of the right to education. The basic education is thus an entry point in this respect. The interrelationship between basic education and justiciability of the right to education merits special consideration. It would be very valuable to make the judicial processes better known.

20. With respect to the justiciability of the right to education, experience and knowledge available at the regional level is also important and deserves reflections. Possibilities of mutually reinforcing the institutional mechanisms<sup>13</sup> existing at the regional level and the international level must be examined. Consideration must also be given to the role of tribunals and human rights institutions, notably the National Human Rights Commissions and Ombudspersons, as they are important in enforcing the right to education by looking into the cases of its violations and by political and legal pressure upon the authorities and institutions concerned to enforce the right to education.

21. The importance of promoting research and studies on constitutional law and on national legislation in the field of the right to education has been emphasized in the Jakarta Declaration, adopted at the International Conference on *The Right to Basic Education as a Fundamental Human Right and the Legal Framework for its Financing*, December 2005. The *Jakarta Declaration* contributes to the decision taken by UNESCO's Executive Board on the basis of the work of the Joint Expert Group for strengthening the foundations of the right to education in the national legal systems (167 EX/Decision 5.8). An important area regarding the follow up to the Jakarta Declaration relates to developing a network of specialists in the field of the right to education, especially for comparative analysis of provisions in constitutions, legislation and policy plans on the right to basic education as well as the legal framework for its financing.<sup>14</sup>

22. It is important for UNESCO to reinforce its ongoing collaboration with the intellectual community and professional bodies for research and studies in the field of the right to education. This could significantly contribute not only to advancing reflections on the justiciability of the right to education but also on other issues of critical importance for its realization.

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<sup>13</sup> For instance, the Inter-American Court of Justice in Latin America; the European Committee of Social Rights which ascertains whether countries have honoured the undertakings set out in the European Social Charter; or the African Commission on Human and Peoples' Rights, and the recently created African Court on Human and Peoples' Rights.

<sup>14</sup> "Follow-up to the Jakarta Declaration adopted at the International Conference on the Right to Basic Education as a Fundamental Human Right and the Legal Framework for its Financing", December 2005: Document 174 EX/37Rev. and the decision adopted by the Executive Board at its 174th session in April 2006.