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REPORT ON THE FIFTH AND SIXTH MEETINGS OF THE JOINT EXPERT GROUP UNESCO (CR)/ECOSOC (CESCR) ON THE MONITORING OF THE RIGHT TO EDUCATION (NOVEMBER 2006, MAY 2007)

SUMMARY

This document is a report by the Joint Expert Group UNESCO (CR)/ECOSOC (CESCR) on the Monitoring of the Right to Education on its fifth and sixth meetings, devoted to *The right to primary education free of charge for all: ensuring compliance with international obligations*. The document contains a summary of discussions, and a set of recommendations, formulated by 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 24.

1. The fifth and the sixth meetings of the Joint Expert Group UNESCO (CR)/ECOSOC (CESCR) on the Monitoring of the Right to Education (hereinafter referred to as JEG)¹ were devoted to: *The right to primary education free of charge for all: ensuring compliance with international obligations*. These meetings were chaired by Ms Virginia Bonoan-Dandan (Chairperson of the Committee on Economic, Social and Cultural Rights and member of the JEG) and by Ambassador José Duarte Ramalho Ortigao (Ambassador and Permanent Delegate of Portugal to UNESCO and member of the JEG), respectively. The concept paper prepared by the Secretariat and document on recent developments in national legislation served as the basis for the discussions (Annex II).

¹ The Joint Expert Group, established by 162 EX/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, member and former Chairperson and Mr Eibe Riedel, member and former Vice-Chairperson of 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). Annex I is a list of participants in these meetings.

2. The JEG examined various dimensions of the theme during these meetings and, after deliberating on the key issues involved, made a set of recommendations and suggestions.

I. Fifth Meeting: UNESCO Headquarters, Paris, 17 and 18 November 2006

3. The fifth meeting was opened by Ms Ndong-Jatta, Director of the UNESCO Division for the Promotion of Basic Education, who welcomed the members of the JEG on behalf of the Director-General and the Assistant Director-General for Education, and stressed the importance of ensuring that primary education be provided free of charge in keeping with State obligations. After opening remarks by Ms Bonoan-Dandan, the JEG began its discussion on *the right to compulsory primary education available free to all*. It was noted that, while this right was enshrined in many constitutions, it was often not implemented in practice and remained a distant goal for millions of children who were deprived of free primary education. The neglect of the right was to be attributed to a lack of political will and economic and financial resources rather than to deficiencies in the international legal framework. The obligation of States to ensure compulsory primary education available free to all was sufficiently defined in the UNESCO Convention against Discrimination in Education (1960) and the Guidelines for its implementation as well as in General Comments No. 11 (1999) on plans of action for primary education (Article 14 of the International Covenant on Economic Social and Cultural Rights) and No. 13 (1999) on the right to education (Article 13 of the Covenant) of the Committee on Economic, Social and Cultural Rights (“the Committee”). However, many States still needed guidance as to the scope of the obligation to provide free primary education and the meaning of notions such as “compulsory”, “primary” and “free”. The task of the JEG was to raise awareness about the right and especially legal obligations for providing primary education free of charge, and to contribute to a further clarification of its elements. In doing so, UNESCO could contribute statistical data and its expertise as the guardian of the Convention against Discrimination in Education and the author of Articles 13 and 14 of the Covenant, while the Committee could draw on its experience in applying these provisions in the course of its examination of hundreds of periodic reports submitted by States Parties under Articles 16 and 17 of the Covenant. *The JEG recommended that it is crucial to project the State obligations as laid down in international instruments in initiatives for abolition of school fees and to urge States to fully respect their obligations for providing primary education free of charge.*

4. As regards the *length* of primary education, one possibility was to link the duration of compulsory basic education to the minimum age for admission to employment, which was 15 years under Article 2(3) of ILO Convention No. 138 (1973), and require a total duration of a minimum of nine years of compulsory basic education. UNESCO warned that such a definition would be incompatible with the legislation of many States and the development strategies of the World Bank, defining primary education as the first five (States) or six (World Bank) years of schooling, and noted a recent shift towards the more universal concept of “basic education”, comprising primary education plus three years of lower secondary education and in some cases also pre-school education from age 3 to 6. Other participants emphasized that “primary education” was the notion used in the relevant international treaties, while agreeing that five years could be used as a minimum standard for defining the length of primary education. It emerged from the meeting that more conceptual work was required to harmonize and clearly define the notions of primary and basic education.

5. For the JEG, there was a need to identify minimum educational standards in order to define the quality of primary education. Such minimum standards should not fall behind internationally agreed standards and could be defined by UNESCO, in cooperation with the Committee and other relevant United Nations bodies. Indicators and benchmarks were needed for effective monitoring of the quality of education, along the line of internationally agreed minimum standards.

6. It was recalled that *compulsory* schooling meant that neither parents, nor guardians, nor the State are entitled to treat as optional the decision as to whether the child should have access to primary education (see CESCR General Comment No. 11, para. 6).

7. Article 14 of the Covenant clarified that *free* primary education meant *free of charge*. This was also a requirement for equal and universal access to primary education, and this needed to be examined in greater details. The JEG dismissed the argument that school fees may be necessary to ensure the quality of primary education and recalled the obligation of States to ensure that the quality of education does not suffer from its free-of-charge character. In fact, imposing fees may lead to further exclusion of socially and culturally marginalized groups, especially children from poor families who are unable to pay the fees and remain deprived of education. However, UNESCO stressed that the abolition of school fees must be accompanied by strategies to ensure the financial viability of the primary education sector. In the context of the Global Initiative to abolish school fees, UNESCO focuses on universalizing access to primary education for all, especially the disadvantaged and marginalized children. As to the scope of providing primary education free of charge, the JEG felt that there was a need to distinguish between direct and indirect costs. While direct costs such as school fees imposed by the government, local authorities or schools run counter to international obligations and must be eliminated, indirect costs such as expenses for schoolbooks, uniforms or travel to and from school may be permissible. The effect of indirect costs on poorer households should be alleviated by providing financial and other assistance to the families concerned. States Parties should include information on any indirect costs related to primary education in their periodic reports to the Committee and should target disadvantaged and marginalized children and their families in the plans of action that they adopt under Article 14 of the Covenant and as a follow-up to the World Education Forum.

8. In order for the Committee to monitor the *availability* of free primary education *for all*, there was a need for statistical data, on an annual basis, on school enrolment, attendance and drop-out rates, disaggregated by gender, age, ethnic group, rural/urban population, disability, health and social or other status. UNESCO noted that such information was partly available in its Global Report on Education for All (EFA) and would provide to the Committee the relevant data prior to its sessions.

9. It was pointed out that, irrespective of resource constraints, States Parties to the Covenant had an immediate *obligation to take steps* towards the realization of the right to free primary education for all. Such steps and the resources mobilized by a State for ensuring free primary education needed to be closely monitored. In the event that a State is incapable of providing free primary education, in spite of its efforts to use all resources at its disposal to progressively achieve the full realization of this right, States Parties in a position to assist are obliged under Article 2(1) of the Covenant to provide *international assistance and cooperation*.

10. Members of the JEG recalled that the obligation under Article 14 of the Covenant to adopt a detailed *plan of action* for the progressive implementation of the principle of compulsory education free of charge for all was a *continuous obligation*. Accordingly, States Parties were under a continuous obligation to report on the measures taken under existing plans of action, improve such plans and, to that effect, set appropriate indicators and benchmarks in their periodic reports to the Committee. UNESCO noted that national plans of action should address both the accessibility and quality of primary education. To a certain extent, these issues were already covered in the EFA reports of States.

11. The JEG agreed that in order to define appropriate parameters for free primary education, a sustained effort should be made to involve States as well as UNESCO's National Commissions in the process.

12. The JEG decided to continue clarifying the scope and meaning of compulsory education available free to all at its sixth meeting, to be held in Geneva in May 2007. It also decided to include the non-discrimination and equality of educational opportunities dimension of that right (temporary special measures for disadvantaged and marginalized children and their families; minority language education; gender dimension) on the agenda for its sixth meeting.

II. Sixth meeting, Palais des Nations, Geneva, 9 May 2006

13. Opening the sixth meeting of the Joint Expert Group UNESCO (CR)/ECOSOC (CESCR) on the Monitoring of the Right to Education (JEG), held in Geneva on 9 May 2007, Mr Philippe Texier, Chairperson of the Committee on Economic, Social and Cultural Rights (CESCR), welcomed the members of the JEG on behalf of CESCR. He commended the fruitful collaboration between UNESCO and CESCR. In his opening remarks, Mr Ramalho Ortigao stressed the key importance of the right to education as a pillar of development and also mentioned the educational situation of millions of children in conflict-ridden countries. After adopting the provisional agenda with some modifications, the JEG continued its discussion on the right to compulsory primary education free of charge, which it had begun at its fifth meeting.

14. The JEG discussed the essential components of free and compulsory primary education, including core obligations and quality education. It was recalled that “basic education” was a broader concept than “primary education” and that, in order to avoid confusion, the JEG should limit its discussion to “primary education”. The obligation to ensure “free” primary education meant that any direct costs such as school fees must be eliminated. While indirect costs such as expenses for textbooks, transport, uniforms, and special fees such as exam fees, community contributions to district education boards or parent teacher association (PTA) dues may under certain circumstances be permissible, States should adopt special measures to alleviate the negative effects of indirect costs on children from poorer households. Such measures included the free provision of textbooks and school transport, as well as scholarships and other financial subsidies for financially disadvantaged children. To the extent that school uniforms are compulsory, they must be provided free of charge to children from poorer households. The JEG considered the free provision of midday meals a best practice in providing incentives for parents to send their children to school.

15. Members of the JEG recalled that the obligation in Article 13(2)(a) of the Covenant to ensure that primary education is compulsory and available to all free of charge is a core obligation (see CESCR General Comment No. 3, para. 10) under the Covenant. States without sufficient resources were under an obligation to seek international cooperation and assistance in order to meet this obligation (*ibid.*, para. 13). At the same time, States Parties in a position to assist were obliged under Article 2(1) of the Covenant to provide international assistance and cooperation (*ibid.*, para.14).

16. As regards access to textbooks and learning materials, it was suggested that States and the World Intellectual Property Organization could be invited to consider amending the WIPO Copyright Treaty (1996), with a view to including a copyright waiver for developing countries similar to that contained in the appendix to the Berne Convention for the Protection of Literary and Artistic Works (1886), insofar as learning materials on the Internet are concerned.

17. The JEG emphasized that ensuring the quality of primary education requires, *inter alia*, adequate training and remuneration of teachers, and maintenance of professional standards in accordance with the UNESCO Recommendation concerning the Status of Teachers (1966). In many developing countries, there was a drastic lack of adequately trained teachers, especially in rural areas. The recruitment of female teachers was of crucial importance to encourage parents to send their daughters to school. The JEG was also informed of a recent study on education in conflict or post-conflict countries (*Education under attack* (2007)), prepared in the context of the EFA Global Week, April 2007, highlighting violence against education staff, students, teachers, union and government officials, and institutions.

18. At the beginning of the meeting, UNESCO members of the JEG briefly attended the session of the Committee as observers. At the end of the meeting, they engaged in a dialogue with Committee members. The Chairperson of the sixth meeting of the JEG, Mr Ramalho Ortigao, briefed Committee members on the mandate, main tasks and topics discussed at the sixth meeting of the JEG. In response to a question by one Committee member, he stated that the JEG would

address its recommendations, which had no binding character, to the Committee and to UNESCO, rather than directly to States. Mr Yai shared the concern expressed by another Committee member that with the growth of private schools and related tuition fees, education is increasingly becoming a privilege, in particular in developing countries, despite the fact that it should be at the very basis of development.

19. As regards “Non-discrimination and equality of opportunity, including minority language education and equal opportunities for boys and girls; special measures in favour of disadvantaged and marginalized individuals and groups, including the poor”, the JEG took note of the mutually reinforcing nature of Articles 2(2) and 13(2)(a) of the Covenant and Articles 3 and 4 of the UNESCO Convention against Discrimination in Education in combating discrimination and promoting equality of opportunity and of treatment in education. Articles 2(2) and 13(2)(a) required States Parties to the Covenant to adopt temporary special measures to ensure the equal enjoyment of the right to free primary education by all, including girls, children from poorer households, children with disabilities and minority and refugee children. Minority children in some countries are segregated in separate schools or remedial classes and excluded from mainstream education; refugee children are often excluded by law from free primary education altogether. Examples of special measures are the establishment of mobile schools and creating adequate opportunities for distance learning to accommodate children living in remote rural areas.

20. The JEG was informed of the seventh consultation of Member States on the measures taken for the implementation of the Convention and Recommendation against Discrimination in Education, the results of which will be submitted to the UNESCO Executive Board in September/October 2007. In monitoring the implementation of the right to education, the JEG was an important communicating channel and link between CESCR and the CR. Questions as to how to reflect the right to education in UNESCO’s Programme and Budget for 2008-2009 (34 C/5) and the work of the Joint Expert Group in the Global Action Plan for EFA were also discussed.

21. The JEG discussed questions related to universal access to primary education in the context of the rights of ethnic and linguistic minorities. While Article 5(1)(c) of the Convention against Discrimination in Education recognized the right of members of national minorities to their own educational activities, including the use or the teaching of their own language, this right was not explicitly recognized in the Covenant. However, in its concluding observations, CESCR had repeatedly recommended that States Parties ensure, to the extent possible, that children belonging to linguistic minorities have adequate opportunities to receive instruction in or of their native language at school. In line with Article 14(2) of the European Framework Convention for the Protection of National Minorities (1995), this right could be made subject to certain qualifications such as numerical thresholds or “sufficient demand”. The JEG emphasized that mother tongue education must not lead to lower educational standards for minority children or their segregation or exclusion from education in the main language of a country (Article 5(1)(c)(i)-(iii) of the Convention).

22. At the end of its sixth meeting, the JEG adopted the following recommendations:

- (i) CESCR and the CR, as well as other relevant organs of ECOSOC and the UNESCO Executive Board, should remind States that school fees and other direct costs are incompatible with Article 13(2)(a) of the Covenant and Article 4(a) of the Convention against Discrimination in Education respectively and must be eliminated. An in-depth study on this subject should be conducted in order to examine the current practice in different countries and regions;
- (ii) CESCR and the CR should invite States to include information on any indirect costs related to primary education in their periodic reports and recommend that they adopt special measures to alleviate the negative effects of indirect costs on children from poorer households and to ensure the equal enjoyment of compulsory primary education free of charge by all children, including girls, children from socially and

economically marginalized groups, children with disabilities, and minority and refugee children. Disadvantaged and marginalized children and their families should be targeted in plans of action adopted under Article 14 of the Covenant and/or as a follow-up to the World Education Forum (Dakar, Senegal, 26-28 April 2000);²

- (iii) “Best practices” such as free provision of midday meals and the introduction of mobile schools or distance learning opportunities to accommodate children living in remote areas should be encouraged;
- (iv) CDESCR and the Executive Board should encourage States without sufficient resources to seek international cooperation and assistance, with a view to securing compulsory primary education free of charge for all. At the same time, States in a position to assist should be reminded of their obligation to provide international assistance and cooperation to promote the full realization of Article 13(2)(a) of the Covenant (see CDESCR General Comment No. 3, para. 14);
- (v) UNESCO, in cooperation with CDESCR and other relevant United Nations bodies, should define minimum educational standards, as well as human rights indicators and benchmarks, in order to effectively monitor the quality of primary education, based on internationally agreed standards. States should be urged to take the necessary measures to ensure adequate quality of primary education, e.g. by providing adequate training and remuneration to teachers;
- (vi) CDESCR and other relevant United Nations bodies should encourage and assist States in exploring ways to render the protection of the right to compulsory primary education free of charge (Article 13(2)(a) of the Covenant) more effective. In the future, adoption of an optional protocol to the Covenant on Economic, Social and Cultural Rights for a complaints procedure, currently under development, will contribute significantly to reinforcing the right to education; and
- (vii) UNESCO should promote and intensify normative action for universalizing access to primary education, free of charge for all, laying special emphasis on the *core obligations* of States. Such action should be central to the endeavour of UNESCO and CDESCR to achieve EFA, and should be widely publicized. UNESCO should ensure that the right to education and the work of the JEG is reflected in the EFA Global Action Plan.

23. The JEG decided to examine the outcome of the seventh consultation of UNESCO Member States on the measures taken for the implementation of the Convention against Discrimination in Education, as well as possible follow-up action, and to further explore the dimensions of non-discrimination and equality of opportunity in education at its seventh meeting, to be held at UNESCO Headquarters in November 2007.

24. The Committee on Conventions and Recommendations may wish to recommend to the Executive Board the following draft decision:

The Executive Board,

1. Recalling 162 EX/Decision 5.4, 171 EX/Decision 27, 172 EX/Decision 26 and 175 EX/Decision 29,
2. Having examined document 177 EX/37,

² “In the Dakar Framework for Action States collectively committed themselves to the attainment of the following goals: “[...] (ii) ensuring that by 2015 all children, particularly girls, children in difficult circumstances and those belonging to ethnic minorities, have access to and complete free and compulsory primary education of good quality.”

3. Expresses its appreciation of the work of the Joint Expert Group UNESCO (CR)/ECOSOC (CESCR) on the Monitoring of the Right to Education;
4. Recognizes the key importance of the theme it addressed in its fifth and sixth meetings;
5. Requests all Member States to respect the entitlement of every child to good quality primary education free of charge, and to comply fully with their international obligation in this respect, as a minimum core obligation;
6. Also requests the Director-General to take appropriate action as a follow-up to the recommendations made by the Joint Expert Group in paragraph 22 of document 177 EX/37;
7. Further requests the Director-General to lay special emphasis on and widely publicize the minimum core obligation of Member States, and promote more emphatically normative action for good quality primary education free of charge for all, without discrimination or exclusion as part of the EFA process;
8. Encourages the Joint Expert Group to continue its work on the issue of key importance for the realization of the right to education;
9. Requests it to report to the Executive Board at its 179th session.

ANNEX I

List of participants

Members of the Joint Expert Group:

- (i) H.E. Mr Olabiyi Babalola Joseph Yai (Ambassador and Permanent Delegate of Benin to UNESCO)
- (ii) H.E. Mr José Duarte Ramalho Ortigao (Ambassador and Permanent Delegate of Portugal to UNESCO)
- (iii) Ms Virginia Bonoan-Dandan, Chairperson (2006), and member (2007) of the Committee on Economic, Social and Cultural Rights
- (iv) Mr Eibe Riedel, Vice-Chairperson (2006) and member (2007) of the Committee on Economic, Social and Cultural Rights

Secretariat:

Ms Ann Therese Ndong-Jatta, Director, Division for the Promotion of Basic Education, Education Sector, UNESCO (fifth meeting only)

Mr Abdulqawi A. Yusuf, Director, Office of International Standards and Legal Affairs, UNESCO

Ms Ingeborg Breines, Director, UNESCO Liaison office, Geneva (sixth session only)

Mr Kishore Singh, Programme Specialist, UNESCO Division for the Promotion of Basic Education, and Secretary of the JEG

Ms Rolla Mourné, Assistant Programme Specialist, UNESCO Division for the Promotion of Basic Education (fifth meeting only)

Mr Jakob Schneider, Human Rights Officer, United Nations Office of the High Commissioner for Human Rights (OHCHR), Geneva

Observers:

Mr Andrew C. Koss, Deputy Permanent Delegate of the United States of America to UNESCO (fifth meeting only)

Ms Françoise Medegan
First Counsellor, Permanent Delegation of Benin to UNESCO

Ms Teresa Salado
Attaché, Permanent Delegation of Portugal to UNESCO

Mr Alfred Fernandez (Director-General, International Organization for the Development of Freedom of Education (OIDEF), Geneva)

ANNEX II

The right to primary education free of charge for all: ensuring compliance with international obligations

Concept paper

Introduction: normative framework and international legal obligations

1. The right to primary education, free of charge, is established by international instruments, notably UNESCO's *Convention against Discrimination in Education*, Articles 13 and 14 of the *International Covenant on Economic, Social and Cultural Rights* and Article 28(1) of the *Convention on the Rights of the Child*. Article 4 of the *Convention against Discrimination in Education* and Article 13(2)(a) of the *International Covenant* recognize clearly the right of everyone to primary education, free of charge.¹ Article 14 of the *International Covenant* lays down State obligations for a detailed plan of action for the progressive implementation of the right to compulsory education free of charge for all.² These obligations are similar to the political commitments made under the *Dakar Framework for Action* regarding the national EFA action plan.³

2. In spite of this normative framework, primary schooling is in fact not free in many developing countries⁴ and universal free primary education is still far from being a reality. Moreover, school fees imposed are contrary to the international normative framework and incompatible with international legal obligations.

3. Normative action for universalizing access to primary education that is free of charge for all therefore needs be intensified, laying special emphasis on the minimum core obligations of States. This must be central to the endeavour to achieve EFA, and needs to be widely publicized. The right to education must figure prominently, for example with respect to the World Bank/UNICEF School Fee Abolition Initiative and in all advocacy for the realization of the right to free primary education.

Nature and scope of State obligations

4. The United Nations Committee on Economic, Social and Cultural Rights (CESCR) has interpreted the right to compulsory primary education free of charge for all in its General Comment No. 11 (1999) on plans of action for primary education (Article 14 of the Covenant)⁵ and General Comment No. 13 (1999) on the right to education (Article 13 of the Covenant) as well as in its Concluding Observations (COBs) on numerous State Party reports submitted under Articles 16 and 17 of the Covenant. As General Comment No. 11 states, the nature of this requirement for primary education free of charge is *unequivocal*. As regards the nature of the obligations of States Parties under Article 13(2)(a), General Comment No. 13 states that the obligation to provide primary education for all is an immediate (para. 51) and *core obligation* (para. 57) of States Parties

¹ The States Parties to the Convention undertake "[...] To make primary education free and compulsory [...]" (Article 4(a)). Similarly, the States Parties to the Covenant "recognize that [...] primary education shall be compulsory and available free to all." (Article 13(2)(a)).

² Article 14 of the *International Covenant* stipulates that "Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all".

³ One of the Dakar goals set at the World Education Forum is to ensure that "by 2015 all children, particularly girls, children in difficult circumstances and those belonging to ethnic minorities, have access to and complete, free and compulsory primary education of good quality".

⁴ Providing Primary Education Free of Charge, UNESCO, OIDEL, 2005.

⁵ General Comment No. 11 (1999): Plan of Action for Primary Education (Art. 14): 10/05/99. E/C.12/1999/4.

to the Covenant. Article 13 of the Covenant enjoins upon State Parties to the International Covenant to “prioritize the introduction of compulsory, free primary education”.⁶

5. States are duty bound to respect and fulfil their *core obligation*. As CESCR has stated, they must ensure equal access to primary education for all children of school age residing in their territory, including non-nationals and irrespective of their legal status (General Comment No. 13, para. 34). Any denial of the right to free primary education on the basis of nationality or statelessness and/or legal residence status is therefore incompatible with international obligations under Articles 13(2)(a) and 2(2) of the International Covenant. The same goes for children of migrant workers and of minority groups.

6. As formulated in Article 13(2)(a), primary education has two distinctive features: it is “compulsory” and “available free to all”.⁷ *Compulsory* schooling means that neither parents, nor guardians, nor the State are entitled to treat as optional the decision as to whether the child should have access to primary education (General Comment No. 11, para. 6).⁸ Similarly, the prohibition of gender discrimination in access to education, required also by Articles 2 and 3 of the Covenant, is further underlined by this requirement. It should be emphasized, however, that the education offered must be adequate in quality, relevant to the child and promote the realization of the child’s other rights. In order to ensure universal primary school attendance, States Parties are obliged to set the minimum working age at no less than 15 years (COBs Mexico (2006), para. 41; see also Article 2(3) of ILO Convention No. 138 (1973) concerning Minimum Age for Admission to Employment) and to ensure that communities and families are not dependent on child labour (General Comment No. 13, para. 55).

Right to free primary education in the context of EFA

7. UNESCO attaches high importance to the State obligations for free primary education. UNESCO’s Medium-Term Strategy (2002-2007) states that “[a]dvancing the right to education as enshrined in the Universal Declaration of Human Rights is central to UNESCO’s mission. Free, compulsory and universal primary education for all is among the most clearly defined of these rights, which governments have a duty and responsibility to make a reality”.⁹ Central to these reflections is the concern to reach the unreached – children belonging to cultural and linguistic minorities, children from socially and economically marginalized groups, children in geographically remote areas (such as nomadic children) and in particular children from poor households, who are deprived of any means to bear the cost of primary education.

8. Governments are expected to follow up on the recommendations made by the High-Level Group on EFA. In the first Recommendation of the Communiqué issued at the second meeting of the High-Level Group on EFA (Abuja, Nigeria, November 2002), the Ministers of Education stated that “[a]s next steps we particularly recommend that: governments in the South must ensure that free and compulsory primary education is a right reflected in national legislation and in practice”. Similar recommendations were made at the third meeting of the High-Level Group on EFA organized in New Delhi (India) in November 2003. The action agenda in the Communiqué issued after the meeting contains, *inter alia*, commitments by the Ministers to “enacting national legislation to enforce children’s right to free and compulsory quality education, prevent and progressively eliminate child labour, and prohibit early marriage”. The EFA Global Monitoring Reports provide information as regards realization of the right to primary education, including statistical information on duration for compulsory education in different countries.

⁶ General Comment No. 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.

⁷ General Comment No. 13 *op. cit.* (paras. 8-10).

⁸ This provision of compulsory primary education in no way conflicts with the right recognized in Article 13.3 of the Covenant for parents and guardians “to choose for their children schools other than those established by the public authorities”.

⁹ UNESCO’s Medium-Term Strategy 2002-2007 (31 C/4, para. 57), UNESCO, Paris.

9. Monitoring the implementation of the right to free primary education is an important part of UNESCO's normative action. Member States have the obligation to take measures for implementing the Convention against Discrimination in Education and provide information on the progress with respect, *inter alia*, to ensuring universal access to primary education. The Guidelines for preparation of reports (2000-2005) for the seventh consultation of Member States on measures taken to implement the Convention contain detailed provisions for this purpose, with emphasis on EFA and with particular concern for disadvantaged and marginalized groups, especially children from poor households.¹⁰

Legal parameters of free education – considerations relating to the definition and types of schooling costs

10. The requirement that primary education be available *free* for all has been interpreted by the CESCR as guaranteeing the availability of primary education without charge to the child, parents or guardians (General Comment No. 11, para. 7). Fees imposed by the government, local authorities or the school as well as other direct costs constitute disincentives to the enjoyment of the right and may jeopardize its realization. They are also often highly regressive in effect and must be eliminated (*ibid*). Their elimination is a matter that must be addressed by the required plan of action (General Comment No. 11).

11. States Parties are thus obliged to eliminate all school-related fees so as to make compulsory primary education truly free for all children (COBs China (2005), para. 66). While direct costs such as school fees imposed by the government, local authorities or schools run counter to international obligations and must be eliminated, indirect costs such as expenses for schoolbooks, uniforms or travel to and from school may be permissible. Currently, the heaviest charges on a family's budget come from the indirect costs, notably for parents' compulsory contributions. Indirect costs, such as compulsory levies on parents (sometimes portrayed as being voluntary, when in fact they are not), or the obligation to wear a relatively expensive school uniform, must be eliminated. Other indirect costs may be permissible, subject to the examination by CESCR on a case-by-case basis.

12. An important question as regards the entitlement to receive free primary education is how to alleviate the effect of indirect costs on poorer households. This requires special measures for providing financial and other assistance. States Parties should include information on any indirect costs related to primary education in their periodic reports to CESCR and target disadvantaged and marginalized children and their families in the plans of action that they adopt under Article 14 of the Covenant and as a follow-up to the World Education Forum. Compensatory measures for disadvantages due to family economic circumstances and various forms of financial aid for schooling are important to enable families of modest economic circumstances to support more easily the education of their children.

13. The variety of schooling costs and complexity of situations in some countries suggest that there is an imperative need for a methodology to define what is commonly understood as 'schooling costs', as well as a system of classification for these costs. The international community's efforts should focus on abolishing direct costs and minimizing indirect costs. In this respect, it is important to note that Articles 3 and 4 of UNESCO's Convention against Discrimination in Education offer the necessary guidelines for this purpose by indicating the measures to be taken in the matter of school fees, the granting of scholarships and other forms of assistance, etc.

14. Many developing countries are adopting incentives such as provisions for textbooks, day-school meals and transport, especially for children from disadvantaged and marginalized groups, and in particular from poor households. Such practices are exemplary and deserve to be encouraged. They make it attractive for children to attend school and are significant in mitigating

¹⁰ These Guidelines were approved by UNESCO's Executive Board in April 2005 (174 EX/Decision 28), UNESCO, Paris.

school drop-outs. Moreover, in countries with severe resource constraints and widespread poverty, inequalities in educational opportunity are often more pronounced and have required States to adopt many different kinds of compensatory measures.

Universal access to education and non-discrimination

15. Making education free is not, however, the only way of making it accessible: non-discrimination is no less essential, since it enables those from disadvantaged or vulnerable categories to benefit equally from the right to education. There is an even greater obstacle to overcome here, as there are not only economic factors at play but also cultural and sociological constraints that cannot be overlooked and are difficult to circumvent.

16. The principle of *non-discrimination* and *equal access* to education as a right, expressed in the Convention against Discrimination in Education and stipulated in Articles 2(2) and 3 of the International Covenant, is an important dimension of the right to primary education *for all*. Primary education must be accessible to all, especially the most vulnerable groups, *in law and in fact*, without discrimination on any of the prohibited grounds (General Comment No. 13, para. 6(b)(i)). States Parties to the International Covenant are obliged to remove gender stereotyping, which impedes access to primary education by girls (General Comment No. 13, para. 55; COBs Zambia (2005), para. 56). In addition, any disparities in school enrolment rates between girls and boys and between rural and urban areas must be eliminated (COBs Morocco (2006), paras. 30 and 57). States Parties must ensure equal access to primary education for all children of school age residing in their territory, including non-nationals and irrespective of their legal status (General Comment No. 13, para. 34). Any denial of the right to free primary education on the basis of nationality or statelessness (COBs Kuwait, paras. 26 and 46; Azerbaijan, paras. 33 and 59) and/or legal residence status (COBs China/Hong Kong Special Administrative Region (2005), paras. 89 and 101) is therefore incompatible with Articles 13(2)(a) and 2(2) of the Covenant. The same goes for children of migrant workers (COBs China/Macao Special Administrative Region (2005), paras. 116 and 126) and minority children (COBs China (2005), paras. 37 and 66).

Principle of equity and positive measures

17. Removal of all *educational disparities* is a major challenge. Certain categories suffer from exclusion or discrimination, such as girls and women and underserved groups (street children, working children, rural and remote populations, nomads and migrant workers, indigenous peoples, ethnic, racial and linguistic minorities, refugees, displaced persons and people under occupation, and the disabled requiring special attention), even if the achievement of equity entails positive discrimination or granting priorities to certain groups.¹¹

18. The CESCR has clarified that the adoption of *temporary special measures* intended to bring about *de facto* equality for men and women and for disadvantaged groups is not incompatible with the right to non-discrimination and equal access to free primary education, as long as such measures do not lead to the maintenance of unequal or separate standards for different groups, and provided that they are not continued after the objectives for which they were taken have been achieved (General Comment No. 13, para. 32). In its Concluding Observations, the CESCR has, for example, recommended that States Parties: upgrade schooling programmes for indigenous and migrant children, child workers and children belonging to other disadvantaged and marginalized groups, in particular girls (COBs Mexico (2006), para. 45); take effective measures to promote school attendance by Roma children and children belonging to other minority groups as well as refugee and internally displaced children, by increasing subsidies, scholarships and the number of teachers instructing in minority languages (COBs Serbia and Montenegro (2005), para. 64); promote equal access by Roma children to primary education, e.g. through the grant of scholarships and the reimbursement of expenses for schoolbooks and of travel expenses to attend school; and closely monitor school attendance by Roma children (COBs Bosnia and Herzegovina

¹¹ Yves Daudet and Kishore Singh "The Right to Education: An Analysis of UNESCO's Standard-Setting Instruments", UNESCO, Paris, 2001 (p. 24).

(2005), para. 51). In order to alleviate the effects of indirect costs on poorer households, States Parties should provide financial and other assistance to enable children from poorer households, including child heads of household (COBs Zambia (2005), para. 55), to exercise the right to primary education. Similarly, minority and indigenous children and their families may be entitled to temporary special measures, including scholarships and financial subsidies such as reimbursement of expenses for schoolbooks and of travel expenses (see *supra*, para.6).

Right to education of children belonging to minorities or indigenous communities

19. The right of minority and indigenous children to receive *instruction in* or of their native *minority or indigenous languages* arguably forms part of the right to primary education, subject to certain qualifications.¹² Accordingly, CESCR has recommended that States Parties ensure, “to the extent possible”, that children belonging to minority linguistic groups have an opportunity to learn their mother tongue, including regional dialects, at school (COBs Greece (2004), para. 50; see also COBs Libyan Arab Jamahiriya (2005), para. 41) and take all possible measures to ensure that the teaching of indigenous languages in schools is increased (COBs Ecuador (2004), para. 58). For this purpose, States Parties should: ensure that there are an adequate number of schools and teachers instructing minority or indigenous languages (COBs Uzbekistan (2005), para. 67; Serbia and Montenegro (2005), para. 64; Greece (2004), para. 50); develop adequate learning materials (COBs Uzbekistan (2005), para. 67); and allocate sufficient budgetary resources to bilingual and multicultural education (COBs Mexico (2006), para. 45).

20. Children belonging to minorities or indigenous communities are entitled to have *equal opportunities* to receive instruction in or of their mother tongue (see COBs Slovenia, para. 11); any distinction between different minority and indigenous groups must be justified by reasonable and objective criteria. Despite the trend towards requiring instruction in or of the main minority languages within a State Party, CESCR clearly *rejects* the establishment of *separate schools* for children belonging to different ethnic groups and asks States Parties to teach *one overarching curriculum* to all classes, irrespective of ethnicity (COBs Bosnia and Herzegovina (2005), para. 50). It goes without saying that such curricula should provide for instruction in the official language of States Parties.

21. The rights of national minorities are protected for carrying out their own educational activities in accordance with Article 5, paragraph 1(c), of the Convention against Discrimination in Education, which reflects the principle of respect for cultural diversity. Education of ethnic and linguistic minorities is indeed a complex issue. In today’s societies, which are increasingly becoming multicultural and multi-ethnic, there is need for a better understanding of the right to (primary) education and learning in the mother tongue.

Providing free primary education of good quality

22. The need to provide primary education of good quality was stressed at the World Education Forum, and this is of critical importance in the context of EFA. The education offered must be adequate in quality, relevant to the child and promote the realization of the child’s other rights. Abolishing costs allows a large number of children to attend school but is not a sufficient measure for them to remain within the education system. Governments must take complementary measures in order to ensure, for instance, teachers’ recruitment and professional training, provisions for textbooks, school maintenance (furnishing, equipment) and development expenditure for quality education, etc.

23. The obligation to provide primary education free of charge is inextricably linked with the obligation to ensure quality education, as established by the Convention against Discrimination in Education. The term “education” in the Convention is defined as including “access to education,

¹² See e.g. Article 14(2) of the European Framework Convention for the Protection of National Minorities (1995): “if there is sufficient demand”; “as far as possible and within the framework of their education systems”.

the *standard and quality of education*, and the conditions under which it is given” (Article 2(2)). Further, the Convention lays down the obligation for the States Parties “[t]o ensure that the standards of education are equivalent in all public educational institutions of the same level, and that the conditions relating to the *quality* of the education provided are also equivalent” (Article 4(b), emphasis added). The importance attached to quality education is also expressed in the Recommendation concerning the Status of Teachers (1966), which provides that “as an educational objective, no State should be satisfied with mere quantity, but should seek also to *improve quality*” (Article 10(g)). Poor standards of education in public schools and the phenomenal expansion of private educational institutions in many developing countries raise the fundamental question of preserving quality education – both in public and private schools. In line with the Recommendation concerning the Status of Teachers, which “applies to *all teachers in both private and public schools*” (Article 3, emphasis added), it is crucial to valorize the teaching profession.

24. The work of CESCR is helpful in understanding *quality* and *content*. Primary *education* must comply with “minimum educational standards” to be established and effectively monitored by States Parties (General Comment No. 13, para. 54), be culturally appropriate and of good quality (General Comment No. 13, para. 6(c)), and conform to the educational objectives set out in Article 13(1) of the Covenant (General Comment No. 13, para. 59). As stated by CESCR in its Concluding Observations, States Parties are obliged to ensure that educational standards in public schools do not fall behind those in private schools. Domestically competitive salaries and the adequate status and working conditions of qualified teachers, as well as a sufficient quantity of teachers and functioning educational facilities, are among the preconditions for ensuring the quality of primary education.

25. The argument that school fees may be necessary to ensure the quality of primary education is unacceptable: it is the obligation of States to ensure that the quality of education does not suffer from its free-of-charge character. In fact, imposing fees may lead to the further exclusion of socially and culturally marginalized groups, in particular children from poor families who are unable to pay the fees and remain deprived of education.

Obligations to providing resources and a legal framework for financing free primary education

26. Governments are primarily responsible for ensuring that access to primary education is universalized and not denied to any child. It is incumbent upon them to mobilize resources for this purpose. In order for a State Party to the International Covenant to be able to attribute its failure to meet its core obligations under Article 13(2)(a) to a lack of available resources, it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, these core obligations.¹³

27. A State Party cannot escape the unequivocal obligation to adopt a plan of action, required under Article 14 of the International Covenant, on the grounds that the necessary resources are not available. If the obligation could be avoided in this way, there would be no justification for the unique requirement contained in Article 14 of the International Covenant, which applies, almost by definition, to situations characterized by inadequate financial resources. By the same token, and for the same reason, the reference to “international assistance and cooperation” in Article 2.1 and to “international action” in Article 23 of the Covenant are of particular relevance in this situation. Where a State Party is clearly lacking in the financial resources and/or expertise required to “work out and adopt” a detailed plan, the international community has a clear obligation to assist (General Comment No. 11).

28. Several questions must be reflected on as regards the need to develop a legal framework for free primary education for all, especially in those countries which are lagging behind in achieving EFA goals: what are the provisions, if any, for financing such education in a country’s constitution?

¹³ See General Comment No. 3 (1990) on the nature of States Parties’ obligations (para. 10).

What kind of legal framework for financing primary or basic education is being put in place as part of developments in national legislation and education policy, along with what national budget priorities, to enable governments to raise the necessary resources for ensuring universal access to primary education free of charge?

Preserving public interest in education

29. The concept of education as a *public good* underlines the normative framework for the right to education. Reflections on this concept are crucial in developing and applying national legal frameworks for education. This could be considered in the context of globalization, which carries with it the danger of creating a marketplace in knowledge that excludes the poor and the disadvantaged. UNESCO's Medium-Term Strategy for 2002-2007, which recognizes the importance of policy dialogue for advancing the right to education, provides that "UNESCO will further seek to engage Member States and new educational providers in a dialogue highlighting education as a public good and encourage all actors in the field of education to pay due regard in their undertakings to the need for equity, inclusion and social cohesion in today's societies".¹⁴

¹⁴ UNESCO's Medium-Term Strategy (2002-2007) (31 C/4, para. 62), UNESCO, Paris.