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Item 28 of the provisional agenda

**GUIDELINES FOR THE PREPARATION OF REPORTS FOR THE
SEVENTH CONSULTATION OF MEMBER STATES ON THE IMPLEMENTATION
OF THE CONVENTION AND THE RECOMMENDATION
AGAINST DISCRIMINATION IN EDUCATION (1960)**



**Economic and Social
Council**

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

Second Meeting

3-4 May 2004

Palais des Nations
Geneva

FINAL REPORT

UNESCO
7 Place de Fontenoy
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1. The Joint Expert Group UNESCO (CR)/ECOSOC (CESCR) on the Monitoring of the Right to Education (Joint Expert Group)¹ held its second meeting during the 32nd session of the United Nations Committee on Economic, Social and Cultural Rights (CESCR). The agenda for the meeting (Annex I) reflected the priorities mentioned in 167 EX/Decision 5.8, adopted by UNESCO's Executive Board in October 2003, following the first meeting of the Joint Expert Group (Annex II). As foreseen in the Report on the first meeting, members of the Joint Expert Group from UNESCO's Committee on Conventions and Recommendations (CR) were invited at the outset to observe the dialogue CESCR conducts with the States Parties to the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), while the State of Kuwait was reporting, and how the General Comment No. 13 on the right to education is used in reporting. This was followed by a brief dialogue with the members of CESCR, during which the ongoing collaboration between CESCR and UNESCO in the field of the right to education and the key areas for discussions were highlighted. The chairperson of CESCR recalled the importance of the Joint Expert Group as being "historic".
2. The meeting, presided over by Mr Huefner, took place in a collegial spirit. Mr A. Yusuf, Director of UNESCO's Office of International Standards and Legal Affairs, informed the Joint Expert Group that suggestions it had made during its first meeting were taken into consideration in "Rules of Procedure concerning recommendations to Member States and international conventions", as established by the General Conference at its 32nd session in October 2003 (32 C/Resolution 77, adopted on 15 October 2003) covered by the terms of Article IV, paragraph 4, of the Constitution of UNESCO.
3. In continuity with its first meeting, the Joint Expert Group attached high significance to practical ways of complementarity in the work of CESCR and CR in the monitoring of the right to education. The thrust of the discussion was to identify core issues in a spirit of bringing the two reporting systems closer. Given the fact that there are 83 States which are Parties to both UNESCO's *Convention against Discrimination in Education* (CADE) and ICESCR, concern was expressed about the risk of overlapping in the work of the Committees (CESCR and CR) as well as for the States Parties. There was a consensus that although there is some overlapping, CADE and ICESCR in essence are different. Rather than examining the reports submitted by Member States on the implementation of CADE individually, the current practice of CR is to examine a synthesis report prepared by the UNESCO Secretariat. The reporting procedure on the implementation of CADE has a general nature with a focus on the global status of implementation of CADE in the world rather than examining individual State reports, while the reporting procedure on ICESCR is an individual one, focused on the State Party and the status of the implementation of the Covenant provisions. Despite these differences, the experts agreed that there are possible ways to make intelligent use of both procedures and the correspondent information with regard to the right to education. *To further define the areas of synergies and shared interests in the process of streamlining, it was stated to carefully examine both ICESCR and CADE as a starting point, guided by General Comments and Revised Guidelines of CESCR used for monitoring work.* Reducing the State burden in reporting was a guiding factor. With a view to providing a comparative perspective for greater complementarity in monitoring the right to education, the experts recommended that a document should be prepared which brings out the common features as well as differences in CADE and ICESCR, along with a chart of equivalent provisions and the States which are Parties to both CADE and ICESCR.

¹ The Joint Expert Group, established by Decision 5.4 adopted by UNESCO's Executive Board at its 162nd session in October 2001, held its first meeting at UNESCO Headquarters on 19 May 2003 (167 EX/CR.2 and 167 EX/Decision 5.8). It is composed of four members: Ms Virginia B. DANDAN, Chairperson of CESCR and Mr Eibe RIEDEL, Vice-Chairperson of CESCR, representing CESCR; and Mr Cornelis PIGOT and Mr Klaus HUEFNER, members of CR, representing CR.

4. Views were exchanged during the meeting on the concept of the rights-based approach and rights framework in relation to the right to education. It was pointed out that while monitoring the implementation of the right to education, CESCR bears in mind the overall impact of ICESCR as well as that of discrimination on the right to education. Moreover, Article 13 of ICESCR is linked with its Articles 2(2) and 3. Consideration could be given to a similar approach as regards the implementation of CADE. The essential question was how to translate in practical terms the rights-based approach.

5. The experts deliberated at length over the questions relating to the foundations of the right to education in the legal system. The dialogue CESCR maintains with the States parties to ICESCR focuses on the legal framework and practical impact of laws developed in line with State obligations under ICESCR. In monitoring the right to education, looking at the legislative setting and the constitution both in law and in fact was crucial. Concrete national-level situations giving life to the letters of the legal provisions are critically important. Besides, the experts emphasized the significance of institutional mechanisms of implementation and application of the legislative framework as well as equity issues as regards the obligation of Member States. They recommended that the legal foundation of the right to education should be given highest priority.

6. In that perspective, the Joint Expert Group underlined the need to elaborate on the complementarity of the two bodies in normative action. The importance of the legal framework of implementation and application of national laws in relation to EFA was recognized. The normative framework for the right to education as well as its application was highly significant. UNESCO's proactive role and technical assistance being provided to Member States for modernizing legislation for EFA deserves enhanced support. Reflections upon the normative implications of the Dakar Framework for Action for Education for All (EFA) were very valuable in that context. The experts reiterated the need for research and studies and analysis of education laws in several areas, such as how international obligations on the right to education are incorporated into the domestic order; how the right to basic education as a fundamental right is integrated into constitutions; and how national laws are applied. They recommended that the organization of an expert seminar on the right to education: its normative framework and its application should be taken up on a priority basis.

7. As in the first meeting, the need for certain operational definitions which could provide elements necessary for measuring the progress in the realization of the right to education was reiterated. Such operational definitions were considered important to put the work of the Secretariat into broader and well-defined context. They are a crucial factor for clarity. *The Joint Expert Group, therefore, agreed that one focus of the cooperation between CESCR and UNESCO (CR) has to be the elaboration of operational definitions in particular with regard to the right to education* on the grounds of legal parameters and General Comment No. 13 of CESCR. Questions such as how basic education differs from education; what are the legal parameters of lifelong education, for instance, must have a common conceptual framework. The Joint Expert Group, therefore, recommended that it is highly necessary to organize an expert seminar on definitional questions.

8. The Experts discussed how the cooperation between CESCR and UNESCO (CR) during the whole process should be organized. It was stressed that it is important not only to consider the options and possibilities but also at this early stage of consideration to bear in mind the implementation and effective realization of the right to education. UNESCO, a specialized agency within the United Nations system, should assist the work of CESCR by providing data and information on States parties to the Covenant *ex ante* as an institutional attempt to make the data

more objective. In this respect, the role of ILO in the work of the CESCR was cited.² Based on such information, Members of CESCR could raise questions to the States parties as proposed by UNESCO. It was recalled that UNESCO disseminates the Concluding Observations CESCR adopts for the follow-up action by the State party after examining reports. In these Concluding Observations, CESCR advises States parties to seek assistance from UNESCO. With regard to the ex post-procedure, UNESCO would get the report and the Concluding Observations immediately after the sessions of CESCR. *Action taken by UNESCO within the framework of follow-up on the Concluding Observations could be very helpful. Overall, the Joint Expert Group agreed on the acceleration of exchange of information between CESCR and UNESCO in the field of education.*

9. Another item discussed was the question of developing indicators for measuring progressive realization of the right to education. Although many indicators relating to education as such exist, indicators measuring the right to education are underdeveloped.³ In this respect, the importance of general key indicators and State obligations as well as indicators for the measurement of the *obligations to respect, to protect and to fulfil* was stressed. The experts dwelt upon the responsibility of the UNESCO Institute for Statistics as a main source for reliable and comparable statistics with regard to education. As the data already are computerized, they could be provided in the short term, although no aggregated data with regard to the right to education as such would be available yet. It was recommended that a closer cooperation with the UIS and the EFA Global Monitoring Report Team be institutionalized.

10. In the context of discussion on the core issues, the question of Guidelines for assisting Member States in structuring the reports on the implementation of CADE was discussed. In the spirit of promoting complementarity in monitoring, it was suggested that these Guidelines should be prepared, bearing in mind relevant Guidelines of the United Nations system, the revised Guidelines used by CESCR and the General Comment No. 13 on the Right to Education. This would contribute to integrating the reporting obligations of the States parties to the Convention and those of the States parties to ICESCR (Articles 13 and 14 on the right to education). *It was agreed that possibilities have to be defined as to how the input of CESCR in this process within UNESCO could be enforced.*

11. Furthermore, the Joint Expert Group discussed the importance of UNESCO's national commissions as a main means to strengthening the legal foundations of the right to education as deriving from international obligations and to establish a dialogue at the national level. This "untapped resource" of UNESCO could be very helpful to empower and mobilize the civil society. *The discussion indicated the need for actively involving UNESCO's National Commissions in the State reporting and the follow-up* as they could be a source of reliable information with regard to the implementation and realization of human rights and in particular the right to education.

12. The experts gave consideration to the meeting of States parties to the Convention against Discrimination in Education, to be organized in October 2005 on the sidelines of the 33rd session of the General Conference of UNESCO so that they can adopt appropriate measures to improve the reporting procedures on the Convention, as stipulated in 165 EX/Decision 6.2. *It was suggested that the Joint Expert Group could be a driving force as regards the organization of this meeting.*

² ILO submits reports concerning special information about Member States in its field of competence, which are regarded as extremely helpful in the practice of CESCR, since data on an objective basis are of utmost importance for the measurement of the progressive realization of economic, social and cultural rights.

³ The Joint Expert Group took into consideration a scientific seminar, organized by the International Organization for the Right to Education and Freedom of Education (OIDEL) in 2003 with regard to the measurement of the progressive realization of cultural rights and especially as the right to education by indicators. This could be extremely important also with regard to the legal framework and could embrace as well practical application of the right to education.

13. While concluding the meeting, it was decided that the report of the Joint Expert Group would include the summary of discussions, along with suggestions and set of recommendations. After its approval by the members of the Joint Expert Group, this will be presented as a document by the Chairman of CR to the forthcoming session of CR in September/October 2004, and by the Chairperson of CESCRCR to the 33rd session of CESCRCR in November 2004.

14. Finally, it was proposed that the next meeting of the Joint Expert Group could be planned in January 2005 and subsequent meeting in April 2005 during the 33rd session of CESCRCR in Geneva. The Chairperson of CESCRCR in her general conclusions on behalf of the Joint Expert Group commended the work done by the Secretariats of both CESCRCR and UNESCO.

ANNEX I

Agenda for the Second Meeting of the Joint Expert Group UNESCO (CR)/ECOSOC (CESCR) on the Monitoring of the Right to Education

(Palais des Nations, Geneva, 3-4 May, 2004)

- (i) Cooperation between UNESCO's Committee on Conventions and Recommendations (CR) and the United Nations Committee on Economic, Social and Cultural Rights (CESCR): Follow up to the first meeting of the Joint Expert Group, 19 May 2003, and 167 EX/Decision 5.8, adopted by UNESCO's Executive Board, 14 November 2003.
- (ii) Research and studies on questions of key importance for strengthening the legal foundations of the right to education.
- (iii) Complementarity in monitoring the implementation of Article 13 of the International Covenant on the Right to Education and UNESCO's Convention against Discrimination in Education (1960).
- (iv) Defining strategies for future cooperation.

ANNEX II

UNESCO

Executive Board

167 EX/Decisions
PARIS, 14 November 2003

**DECISIONS ADOPTED BY THE EXECUTIVE BOARD
AT ITS 167th SESSION**

(Paris, 15 September-15 October 2003)

**5.8 Report by the Joint Expert Group UNESCO (CR)/ECOSOC (CESCR)
on the monitoring of the right to education (167 EX/CR.2 and 167 EX/54)**

The Executive Board,

1. Recalling 162 EX/Decision 5.4 relating to the creation of the Joint Expert Group UNESCO (CR)/ECOSOC (CESCR) on the monitoring of the right to education,
2. Also recalling 165 EX/Decision 6.2,
3. Having examined document 167 EX/CR.2,
4. Compliments the Joint Expert Group on the excellent quality of the work done at its first meeting;
5. Expresses its appreciation of the results of this meeting and requests the Joint Expert Group to continue its work;
6. Requests the Joint Expert Group to give priority to the following issues:
 - (a) strengthening of the foundations of the right to education in national legal systems on the basis of international legal obligations;
 - (b) suggestions and possible options for integrating the reporting obligations of the States Parties to the Convention against Discrimination in Education and those of the States Parties to the International Covenant on Economic, Social and Cultural Rights in accordance with Articles 13 and 14 of the Covenant;
 - (c) definition of a set of indicators for the monitoring of the right to education.